

CW 530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Porras Neville
 (Last) (First) (Initial)

Prison Number E37606C.T.F.Institutional Address P.O. Box 689 – Y337, Soledad, CA 93960-0689

JUN 18 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

=====

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CW

Neville Porras

(Enter the full name of plaintiff in this action.)

vs.

Ben Curry, Warden

(Enter the full name of respondent(s) or jailor in this action)

CV 08 3006

Case No.

(To be provided by the Clerk of the Court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

E-filing

(PR)

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Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as the loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution in which you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

5 If you are not presently in custody pursuant to the state judgment against which you seek relief
6 but may be subject to such custody in the future (e.g. detainees), you must name the person in whose
7 custody you are now and the Attorney General of the state in which the judgment you seek to attack
8 was entered.

9 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

10 1. What sentence are you challenging in this petition

11 (a) Name and location of court that imposed sentence (for example, Alameda
12 County Superior Court, Oakland):

13
14 Superior Court of California

San Joaquin, California

15 (Court)

(Location)

16 (b) Case number, if known 43369

17 (c) Date and terms of sentence 16 years to life

18 (d) Are you now in custody serving this time? (Custody meaning being in jail,
19 on parole or probation, etc.) Yes X No

20 Where?

21 Name of institution: Correctional Training Facility

22 Address: P.O. Bo x 686, Soledad, CA 93960-0686

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 P.C. 187, second degree murder
27 _____
28 _____

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes X No

Motion to Suppress: Yes No X

4. How did you plead?

Guilty Not Guilty X Nolo Contendere

Any other plea (specify)

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone Judge alone on transcript

6. Did you testify at your trial? Yes No X

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes No X

(d) Trial Yes X No

(e) Sentencing Yes No

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes No X

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No

Year: UNK Result: Denied

Supreme Court of California Yes No X

Any other court Yes No X

(b) If you appealed, were the grounds the same as those you are raising in this

Petition? Yes _____ No X

Was there an opinion? Yes _____ No X

(c) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No _____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, application or motions with respect to this conviction in any court, state or federal? Yes _____ No X

[Note; if you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: United States Northern District Court

II. Type of Proceeding: Habeas corpus

Grounds raised (Be brief but specific):

a. Similar to enclosed

b. _____

c. _____

d. _____

Result: Pending Date of Result: N/A

II. Name of Court: N/A

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: N/A

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: N/A

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes X No _____

24 Name and location of court: United States Northern District Court

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what right or privilege were you denied? What happened? Who
28 made the error? Avoid legal arguments with numerous case citations. Attached extra paper if you

need more space. Answer the same questions for each claim.

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleaskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

Claim One: See attached

Supporting Facts:

Claim Two:

Supporting Facts:

Claim Three:

Supporting Facts:

If any of these grounds were not previously presented to any other court, state briefly which grounds were not presented and why:

1 List, by name and citation only, any cases that you think are close factually to yours so that
2 they are an example of the error you believe occurred in your case. Do not discuss the holding or
3 reasoning of these cases:

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No X _____

8 If you do, give the name and address of your attorney:

9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled
11 in this proceeding. I verify under the penalty of perjury that the foregoing is true and correct.

12
13 Executed on 6-9-08

14 Date

Neville Parrao

Signature of Petitioner

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STATEMENT OF THE CASE

Petitioner was convicted in 1989, in case number 43369, in the Superior Court in and for the County of San Joaquin, California, to the crime of second-degree murder, in violation of Penal Code section 187. Petitioner was 19 years of age at the time of the crime and received a 16 years to life sentence.

Petitioner was received in the Department of Corrections on December 1, 1989. The life term began on that date and Petitioner has a minimum eligibility release date of May 6, 1999.

Petitioner appeared before the Board of Parole Hearings for his 5th parole suitability hearing on August 15, 2006. The decision to deny him parole became final and appealable on December 13, 2006. (See Exhibit A, at p. 64.)

Petitioner filed a like petition for writ of habeas corpus in the San Joaquin County Superior Court, which was denied on July 9, 2007.

Petitioner filed a like petition in the California Court of Appeals in August 2007. However, Petitioner did not receive said denial until September 5, 2007. Petitioner filed his petition for writ of habeas corpus on October 6, 2007, with the California Supreme Court, which was denied on May 28, 2008; therefore, the writ is timely.

STATEMENT OF THE FACTS

Petitioner submits, for the limited purpose of this habeas proceeding, the summary of facts outlined on page 12 of Exhibit 1 and as such, incorporates by reference as though fully set forth in those facts/factual summary.

STATE COURT STANDARD OF REVIEW

As a recent California Court upheld in *In re Lawrence* 2007 WL 1475283 (Cal.App.2d) the (under review) standard of review in State Courts under the California due process clause and statutory provisions, set forth standard and criteria that limits the Parole Board and Governor's review of parole decisions and gives rise to a protected liberty interest (see *In re Rosenkrantz* (2002) 29 Cal.4th 616, 657). It is true however, that this same decision took away much of the Court's ordinary power in parole review decisions. None the less, the Supreme Court stated:

"[w]e conclude that the judicial branch is authorized to review the

1 factual basis of the Board denying parole in order to ensure that the
2 decision comports with the requirements of due process of law.”

3 Expanding on this, the Court in In re Dannenberg (2005) 34 Cal.4th 1061 acknowledged that
4 the overriding concern in the guiding statutory and regulatory sections was the responsibility to
5 ensure public safety. In Dannenberg the Court cited Penal Code § 3041(a) and reiterated that:

6 “In stating the Board “shall normally” set a parole release date when a
7 prisoner approaches her minimum parole eligibility release date did not
8 mean generally or usually or in most cases. Instead the Board can and
9 should first consider under section 3041(b) whether a prisoner’s
commitment crime and/or other past crimes require further delay in
setting a release date because of public safety.”

10 The High Court suggested the “some evidence” standard must tend to prove the existence of
11 some factor which is relevant to the ultimate finding the statute requires before parole can be denied
12 – release of the prisoner on parole would create an unreasonable risk to public safety. In a similar
13 view the Rosenkrantz, *supra*, Court held:

14 “The governing statute provides that the Board must grant parole unless it
15 determines that public safety requires a lengthier period of incarceration
16 for the individuals because of the gravity of the offense underlying the
conviction.”

17 In clarifying this rational, the Dannenberg Court emphasized that the gravity of the current or
18 past conviction offense or offenses must demonstrate that the prisoner remains [at present time] a
19 danger to public safety. (See Dannenberg 34 Cal.4th at p. 1098.)

20 As the Lawrence, *supra*, Court stated:

21 “Returning to the statutory test, only evidence bearing on the likelihood
22 of recidivism and only to the extent it reveals an “unreasonable risk” of
same is relevant to the decision whether to grant or deny parole.”

23 Similarly, the Court of Appeals in the 2005 decision of In re Deluna 126 Cal.App.4th 585,
24 591, pointed out that:

25 “A parole release decision authorizes the Board (and Governor) only to
26 identify and weigh the factors relevant to predicting ... whether the
27 inmate will be able to live in society without committing additional
antisocial acts.”

28 The same court (*Id.*) concluded that the factors relevant to that decision are not spelled out in

1 statutes enacted by the legislator, but in regulations promulgated by corrections administrators. (See
2 Cal. Code Regs., tit. 15 § 2402 (c)(1) and Cal. Code Regs., tit. 15 § 2402 (c)(2) – (6) and (D).

3 As stated in In re Lee (2006) 143 Cal.App.4th 1400, 1408:

4 “The test is not whether some evidence supports the reason the Governor
5 cites for denying parole, but whether some evidence a parolee’s release
unreasonably endangers public safety.”

6 In the case at bench, there is not one scintilla of evidence in the record which rationally
7 relates (when attached to the commitment offense) to the appropriate and controlling standards or the
8 due process clause of the California constitution which demonstrates that Petitioner will either be a
9 danger to public safety (see Rosenkrantz, supra; Dannenberg, supra) or that can reasonably identify
10 and/or help weigh factors relevant to predicting whether Petitioner will be able to live in society
11 without committing antisocial acts bearing on the likelihood or recidivism to the extent it reveals an
12 “unreasonable risk” of same. (Lawrence, supra; Deluna, supra; Lee, supra.)

13 FEDERAL STANDARD OF REVIEW

14 The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) circumscribes a
15 federal habeas court’s review of a state court decision. Lockyer v. Andrede 538 U.S. 63, 70 123
16 S.Ct. 1166, 1172, 155 L.Ed.2d 144 (2003); Wiggins v. Smith 539 U.S. 510, 520, 123 S.Ct. 2527,
17 2534 156 L.Ed.2d 471 (2003) as amended by AEDPA, 28 USC § 2254(d), provides:

18 An application for writ of habeas corpus should not be granted with respect to any claims
19 adjudicated on the merits in a state court proceeding unless the adjudication resulted in a decision
20 that was contrary to, or involved an unreasonable application of clearly established federal law as
21 determined by the Supreme Court of the United States, or resulted in a decision that was based on an
22 unreasonable determination of the facts in light of the evidence presented in the state [court]
23 proceedings.

24 While 2254(d)’s ‘clearly established’ phrase refers to holdings, as opposed to dicta of [the
25 Supreme] Court holding/precedent, Ninth Circuit precedent may be persuasive authority for
26 purposes of determining, for instance, whether a decision is an unrealistic application of law or
27 determining what is ‘clearly established’ Sims v. Rowland 414 F.3d 1148, 1151 (9th Cir.); Robinson
28 v. Ignacio 360 F.3d 1044, 1057 (9th Cir. 204) – or – when there is no clearly established federal law

1 'specifically' on point to an issue raised the Ninth Circuit has 'clearly' held in Hart v. Massanari 226
 2 F.3d 1155 (9th Cir. 2001). That the first decision of a three-judge panel binds not only other Circuit
 3 Panels, but all encompassing District Courts and "sets the law" for all lower courts and all future
 4 Circuit Panels as well – until the issue is overruled by the court itself, sitting en banc or by the
 5 Supreme Court or unless congress changes the law.

6 The California Supreme Court reaches 'the merits' of the claims raised when it denies the
 7 petition without comment or citation, Gaston v. Palmer 417 F.3d 1030, 1038 (9th Cir. 2005)
 8 amended by 447 F.3d 1165 (9th Cir. 2006) cert. denied and the federal court looks through the
 9 record to the last reasoned opinion, Medley v. Runnell 506 F.3d 857, 826 (9th Cir. 2002) or, to the
 10 extent the claims have not been addressed by any reasonable opinion.

11 The court will conduct an independent review of the record to determine if the court erred in
 12 its application of controlling federal law, Delgado v. Lewis 223 F.3d 976, 982 (9th Cir. 2000);
 13 Brown v. Orivoski 503 F.3d 1006, 1010-1011 (9th Cir. 2007).

14 First: The last reasoned decision in this case was conducted by the San Joaquin County
 15 Superior Court. In that review the court failed in reviewing several of Petitioner's assertions and
 16 therefore 'erred' in its application of controlling federal law. For instance, the court did not review
 17 Petitioner's claim that the Board denied Petitioner due process of law when they failed to considered
 18 all relevant and reliable evidence available to the Board at the time of the decision, to wit,
 19 Petitioner's status as a minor. (Ground one.)

20 Second: The decision under review failed to consider and therefore erred in the proper
 21 application of appropriate federal law; Petitioner's assertion that the denial of parole for the fifth
 22 time denied Petitioner his constitutionally protected liberty interest in parole. (Ground two.)

23 Third: The decision under review failed to consider and therefore erred in the proper
 24 application of appropriate law federal law; Petitioner's assertion that the denial denied Petitioner a
 25 suitability determination where the 'facts' found supported the 'conclusion' that Petitioner posed a
 26 current risk of danger to public safety.

27 Lastly, while that court did conclude that the Board was correct in utilizing the commitment
 28 offense (Rosenkrantz), the court failed to consider, and therefore erred, in the proper application of

appropriate federal law. Petitioner's assertion that the Board denied Petitioner due process by relying on past alcohol use as a substantial factor in egregiousness while failing to cite to facts substantiating the concern that Petitioner still suffers from the disease to the extent it renders him a danger to public safety at this time or that reasonably relates to the belief that Petitioner is in/or maybe in danger of resuming his alcohol consumption upon release. Or how, notwithstanding the alcohol, Petitioner's crime factors themselves after 17 years of incarceration and five suitability hearings reasonably substantiated the Board's conclusion that those factors are sufficient to predict present dangerousness.

The court, simply put, failed to address any of Petitioner's specific claims and cited, in rote, boilerplate reasons to affirm the Board's decision. Therefore, this court should conduct an independent review of the record in this case.

1. GROUND FOR RELIEF

1.

PETITIONER IS BEING DENIED HIS FIFTH AND FOURTEENTH AMENDMENT PROTECTIONS AGAINST THE ARBITRARY AND CAPRICIOUS DENIAL OF PAROLE IN THE BOARD'S FAILURE TO CONSIDER ALL RELEVANT AND RELIABLE EVIDENCE AVAILABLE TO THEM AT THE TIME OF HIS HEARING, TO WIT PETITIONER'S STATUS AS A MINOR AT THE TIME OF THE CRIME. (Rosenkrantz v. Marshall; Roper v. Simmons.)

2.

PETITIONER IS BEING DENIED HIS FIFTH AND FOURTEENTH AMENDMENT PROTECTIONS AGAINST THE ARBITRARY AND CAPRICIOUS DENIAL OF HIS LIBERTY INTEREST (WHICH ATTACHED TO PETITIONER UPON CONVICTION) WITHOUT THE DUE PROCESS OF LAW BY THE BOARD OF PAROLE HEARINGS. (McQuillion v. Duncan; Greenholz v. Nebraska; Allen v. Board of Pardons.)

3.

PETITIONER WAS DENIED DUE PROCESS OF THE LAW WHERE THE BOARD FAILED TO BASE ITS DECISION TO DENY ON RELEVANT AND RELIABLE EVIDENCE. RATHER, THE BOARD RELIED UPON FACTORS OF THE COMMITMENT OFFENSE TO DENY PAROLE POSSESSING NO INDICIA OF RELIABILITY RELATING TO THE ISSUE OF PRESENT DANGEROUSNESS. (Superintendent v. Hill; In re Lee; In re Elkins; In re Weider.)

4.

PETITIONER HAS BEEN DENIED DUE PROCESS OF LAW BY THE BOARD'S RELIANCE OF THE IMMUTABLE FACTORS OF THE COMMITMENT OFFENSE, FOR THE FIFTH TIME, TO DENY PAROLE WHEN SAID FACTORS DO NOT RISE TO THE LEVEL OF EGREGIOUSNESS AND CALLOUSNESS CONTEMPLATED BY LAW AND LEGAL PRECEDENT. (Irons v. Warden; Bair v. Folsom; In re Lee; In re Scott.)

INTRODUCTION

Merely to pick pieces of evidence and create one's own story sufficient to justify an action is not "some evidence" reasonable related to the circumstances sufficient to deny parole for the fifth time. Superintendent v. Hill require more. The Hill requirement mandated that the evidence relied upon possesses not only an "indicia of reliability" but, that it "reasonably related to the circumstances so as to constitute some evidence that the crime was 'particularly egregious.'" (i.e. reasonably sufficient to support the decision made.) Hill 472 U.S. 445-446 (1985). Accordingly, to recite evidence sufficient under different circumstances to support the present decision does not constitute some evidence. The decision of the Board is unreasonable in light of the evidence supporting suitability. Furthermore, since the evidence does not support the decision, the finding possess no indicia of reliability, it is arbitrary, capricious, and denies Petitioner his constitutionally protected liberty interest in parole.

Many courts have recognized that they must conduct an independent review of the record to determine whether the Board's decision to deny parole, or a State Court's decision upholding the Board's decision, constitutes an objectively unreasonable application of federal law. Only by this examination may the Court determine whether the Board's (or State Court's) decision was in fact "reasonable" or "objectively reasonable," Delgado v. Lewis 223 F.3d 976.

It is not enough to merely state that a Court independently reviewed the record, it must apply Hill's "some evidence" test to the facts of the case. While Petitioner, for instance, has no prior record for violence (see Cal Code Regs, tit., 15 § 2402 (d)) should this Court find (as the Board did here) that Petitioner's minor violations committed as a juvenile, constitute evidence of an unstable social factor [combined with use of alcohol] and the gravity of his conviction offense somehow constitute "some evidence" sufficient to deny parole, this Court should legally and factually analyze

1 the content of the record and explain how the evidence can satisfy the Hill standard or why it
 2 doesn't, how this conviction constitutes "some evidence" that Petitioner is a current danger to
 3 society 18 years and five suitability hearings later, how this offense can be deemed particularly
 4 "heinous, atrocious or cruel" relative to other second-degree murders, and finally, how the Board's
 5 decision is not arbitrary based on the evidence.

6 Being mindful that a mere conviction for second-degree murder does not in and of itself
 7 constitute "some evidence" of unsuitability for parole or constitute evidence of present
 8 dangerousness. A murder must have been committed in a manner that is "heinous, atrocious or
 9 cruel" for it to be evidence in and of itself to constitute unsuitability. (Cal. Code Regs. tit., 15 §
 10 2402 (c)(1); In re Smith 114 Cal.App.4th 343, 366 (2003); In re Rosenkrantz 29 Cal.4th 616, 683
 11 (2003); In re Scott 119 Cal.App.4th 871 891 (2004).) Moreover, where, as here, the gravity of the
 12 offense is the primary basis for the determination of unsuitability, that gravity must also demonstrate
 13 that at the time of the hearing in question the inmate continued to pose a present danger to society by
 14 posing a risk of recidivism due to antisocial acts. Penal Code § 3041 (a) and (b); In re Dannenberg
 15 34 Cal.4th 1096; In re Elkins 50 Cal.Rptr.3d 503; In re Lee 49 Cal.Rptr.3d 931. It is only evidence
 16 which would tend to support such a finding that would constitute some evidence. In re Lawrence,
 17 supra.

18 An independent review of the record shows that the only factor that could arguably provide a
 19 basis for a finding that Petitioner's crime was particularly grave and that Petitioner may pose a
 20 present danger is his alcohol use before or during the commission of the crime. This finding is
 21 governed by regulations. The controlling regulations specifically identified five factors to be
 22 considered in the determination, for instance: (a) the offense was carried out in a manner which
 23 demonstrates an exceptionally callous disregard for human suffering; (b) multiple victims were
 24 attacked; (c) the offense was carried out in a dispassionate and calculated manner, such as execution
 25 style murder; (d) the victim was abused, defiled, or mutilated during or after the offense; (e) the
 26 motive was inexplicable or very trivial in relationship to the offense. (Cal Code Regs. tit., 15 § 2402
 27 (c)(a)(A)(E).) The Board found that alcohol was "something pertinent to your situation" (Exhibit 1
 28 at p. 62) and concluded that "Prior criminal conduct of apparent violations relating to alcohol and

1 prior property crimes” (Exhibit 1 p.p 23-27, 29 and 59), based thereon the finding that the offense
 2 demonstrated a “callous disregard for human suffering.” That the “motive for the crime was
 3 inexplicable” and tat Petitioner failed to profit from society’s previous attempts to correct
 4 criminality, the Board seemingly used the alcohol factor (although not specifically) to reach the
 5 conclusion that they reached regarding suitability. This conclusion is wholly unsupported by the
 6 record or some evidence, rendering this finding arbitrary. (*Id.* at § II B (2) *infra.*) Similarly, a
 7 conclusion that a crime committed by a then active abuser under the influence of alcohol almost 19
 8 years ago (an entire generation earlier) in and of itself demonstrate that an individual currently poses
 9 a threat to public safety would be without support in the evidence and “otherwise arbitrary.”

10 Petitioner’s use of alcohol is the sole factor pointed to by the Respondent in an effort to
 11 substantiate its claim of “callous disregard for human suffering,” or that the crime’s “motive was
 12 inexplicable.” Respondent pointed to no evidence in the record other than repeated references to
 13 alcohol to substantiate a finding the crime was especially grave or that Petitioner currently posses an
 14 unreasonable risk of danger to society – nor could they. The particular facts of this case, both pre
 15 and post conviction, do not remotely approach the examples offered in the Regulations of Conduct
 16 which constitutes an “exceptionally callous disregard for human suffering.” The examples, as
 17 outlined in *In re Scott* 119 Cal.App.4th at 892 (quoting Cal. Codes Regs., tit. 15 § 2282) clearly
 18 states:

19 “[T]orture, as where the [v]ictim was subjected to the prolonged infliction
 20 of physical pain through the use of non-deadly force prior to the act
 21 resulting in death and severe trauma, as where [d]eath resulted from
 22 severe trauma inflicted with deadly intent; e.g. beating, clubbing,
 stabbing, strangulation, suffocation, burning, multiple wounds inflicted
 with a weapon not resulting in immediate death or actions calculated to
 induce terror in the victim.”

23 The type of criminal conduct that is sufficiently callous to meet this high standard is shown
 24 in *In re Van Houten* (2004) 116 Cal.App.4th 339.

25 Another California Court recently explained, in rejecting a determination that an inmate
 26 committed a crime with callous disregard for the victim’s suffering stated:

27 “There is no evidence that [the inmate] acted with cold calculation,
 28 dispassion; or that he tormented, terrorized, or injured [the victim] before
 deciding to shoot her; or that he gratuitously increased or unnecessarily

1 prolonged her pain or suffering. Was the crime callous? Yes. However,
2 are the facts of the crime evidence that [the inmate] acted with
3 exceptional callous disregard for [the victim's] suffering, or do the facts
distinguish this crime from other second-degree murders as exceptionally
callous? No. In re Smith 114 Cal.App.4th 367.

4 This exact same analysis is applicable here. The manner in which Petitioner committed this
5 offense (under the influence) does not then or now, reflect calculation or dispassion. Rather, a
6 manifestation which clearly impacted his under developed judgment. The addiction, or use, does not
7 relieve Petitioner of responsibility, rather pin points the inability to classify this crime as one of
8 "cold calculation or dispassion." If indeed an act committed as a result of addiction can be called
9 callous rather than compulsive it still doesn't render the offense remotely more callous than other
10 similar crimes. Clearly, even had the addiction or use of alcohol at the time of the offense been
11 sufficient to warrant the classification of egregiousness, it would not constitute "some evidence"
12 today that Petitioner currently poses a danger to public safety. Penal Code § 3041 and Cal. Code
13 Regs., tit. 15 § 2402 and 2402 (a) cannot be denied or set aside unless the record shows that
14 Petitioner currently is such a danger. (In re Dannenberg 34 Cal.4th at 1071 and 1080.)

15 In assessing "present dangerousness" alcoholism is analogous to a mental disorder. To
16 determine and demonstrate that an individual who committed a crime due to such a disorder
17 constitutes a present danger, one cannot merely state that Petitioner suffered a disorder at the time of
18 the offense. Rather, it must be shown that at the time of the suitability hearing that inmate still
19 suffered from the disorder, to the extent he remains a present danger and his addiction is active at the
20 time of the hearing.

21 There is not a scintilla of evidence in the record that suggest Petitioner's addiction is active
22 or that he is likely to resume such activities if released.

23 The Supreme Court has recognized the requirements of due process vary with the private and
24 governmental interests at stake and the circumstances of the alleged deprivation. However, to ensure
25 that a State created parole scheme serves the public interest in the purpose of rehabilitation and
26 deterrence, the Parole Board and the Courts must be cognizant not only of the factors required by the
27 State statute to be considered, but also the concepts embodied in the Constitution requiring due
28 process. Biggs, supra, 334 F.3d at 916; Morrissy v. Brewer 408 U.S. 471, 481, 92 at 2593, 33

1 L.Ed.2d 484 (1972) and Greenholtz v. Nebraska 442 U.S. at 7-8. Such considerations were sorely
2 lacking in the arbitrary and capricious denial of parole by the Board of Parole Hearings on August
3 15, 2006.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 GROUNDS FOR RELIEF

6 1.

7 PETITIONER IS BEING DENIED HIS FIFTH AND FOURTEENTH
8 AMENDMENT PROTECTIONS AGAINST THE ARBITRARY AND
9 CAPRICIOUS DENIAL OF PAROLE IN THE BOARD'S FAILURE
10 TO CONSIDER ALL RELEVANT AND RELIABLE EVIDENCE
AVAILABLE TO THEM AT THE TIME OF HIS HEARING, TO WIT
PETITIONER'S STATUS AS A MINOR AT THE TIME OF THE
CRIME.

11 In 1989, Petitioner was convicted of second-degree murder in violation of Penal Code § 187.
12 He was sentenced to 15 years to life and that life term began on December 1, 1989.

13 Petitioner was 19 years old and not only under the influence of alcohol, but that alcohol has a
14 significant impact on his thought and actions. Petitioner was an abuser and/or addict of alcohol.
15 (See Exhibit 1 at pp. 1-16.)

16 Petitioner had suffered significant stress even at this young age and had for the most of his
17 life from his peers (growing up in his neighborhood) constant and relentless bullying of Petitioner.
18 (See Exhibit 2, support letter from Petitioner's mother at p. 28.)

19 Add to those explosive circumstances Petitioner's adolescence and you have a cocktail of
20 destruction based on immaturity, bad judgment and childlike responses. Petitioner was an
21 adolescent who had continually suffered abuse at the hands of his peers over his entire life. He was
22 drunk and he, his brother and friends were arguing with neighbors. After his brother left, Petitioner
23 believed he had heard his little brother scream for help. Petitioner, in his adolescent, alcohol
24 induced state and fearing for his brother's safety, went to help. Is this reasonable, rational? To the
25 Petitioner it once was.

26 Here therefore, the generally unreliability of predicting violence is exacerbated by several
27 facts, including Petitioner's age at the time of the offense, the passage of nearly 19 years since the
28 offense was committed, and the fact that all other evidence in the record clearly shows Petitioner's

1 suitability for parole.

2 The reliability of the facts of his crime when used as predictor for dangerousness is also
3 diminished by Petitioner's age at the time of the crime. Here, Petitioner was only 19 years old.
4 Petitioner was an adolescent at the time he committed his crime.

5 See Rosenkrantz v. Marshall 444 F.Supp.2d 1063 (C.D. 2006). Quoting
6 Cornelia Pechman, Linda Levine, Sandra Laughlin and Frances Leslie
7 from "Impulsive and Self-Conscious Adolescence" vulnerability to
8 advertising and promotion, 24 J. Publish Policy and Marketing 1 (Fall
9 2005.) [Explaining that the conventional view is that "adolescence is
roughly synonymous with teenager, or ages 13-19," but that "many
scholars argue that adolescence begins at approximately age 10 and does
not end until early 20's."]

10 In evaluating adolescent behavior in relationship to the predictability of dangerousness, one
11 cannot overlook a passage from Elizabeth Cauffman and Laurence Steinberg on "Maturity of
12 Judgment in Adolescence; why adolescence may be less culpable than adults," 18 Behavior Sciences
13 and L. 741, 742, 756 (2000) where they cite:

14 "Reviewing literature demonstrating that violent act committed by an
15 adolescent possess less risk of future danger than does the commission of
16 such an act by an adult. This is because adolescents are more prone to act
impulsively than adults, and also because the proclivity to commit violent
acts decreases with age and the passage of time."

17 Compared to Erica Beecher, Mona and Edgar Garcia, Hill's "Danger at the Edge of Chaos;
18 Predicting Violent Behavior in a Post - Daubert World," at 24 Cardozo L.R.ev 1845 1889 (2003)
19 where they proclaim:

20 "The decrease in violence and criminal activity with age is well -
21 established principle of criminology."

22 See also, Robert J. Simpson and John H. Laub's "Understanding Desistance from Crime; 28
23 Crime and Justice 1, 46-48 (2001) where they conclude:

24 "Reviewing literature reflecting the robust finding that crime peaks in late
25 adolescence and declines for most persons sharply during developmental
transition to adulthood."

26 Perhaps the foregoing answers the questions that Petitioner simply has never been able to
27 answer when asked by anyone, especially Board members. (See Exhibit I at p. 49, discussing why
28 Petitioner picked up a knife to take to this fight.)

1 Q: "And just the last question, why did you choose to pick it up and take
it to this fight? Why did you think you needed it?"

2 A: "I have no idea why, I just picked it up. I never thought about why I
3 did it. I just picked it up."

4 As the Supreme Court recognized in Rosenkrantz v. Marshall 444 F.Supp.2d 1063, the
5 predictive value of the conduct of such a young person is diminished and renders the irresponsible
6 behavior less reprehensible.

7 "The susceptibility of juveniles to immature and irresponsible behavior
8 means" their irresponsible conduct is not as "morally reprehensible as
9 that of an adult." Thompson v. Oklahoma 487 U.S. 815, 835, 108 S.Ct.
10 2687, 101 L.Ed.2d 702 (1988) (Plurality Opinion). Their own
11 vulnerability and comparative lack of control over their immediate
12 surroundings means juveniles have a greater claim than adults to be
13 forgiven for failing to escape negative influences in their whole
14 environment. See Staford v. Kentucky 492 U.S. 361, 395 109 S.Ct. 2969,
15 their identity means it is less supportable to conclude that even a heinous
16 crime committed by a juvenile is evidence of irretrievably depraved
17 character. From a moral standpoint it would be misguided to equate the
18 failings of a minor with those of an adult, for a greater probability exists
19 that a minor's character deficiencies will be reformed indeed. "[T]he
20 relevance of youth as a mitigating factor derives from the fact that the
signature qualities of youth are transient; as individuals mature, the
impetuosity and recklessness that may dominate in younger years
subside." Jackson v. Texas 509 U.S. 350, 368, 113 S.Ct. 2658, 125
L.Ed.2d 290, (1993); Roper v. Simmons 543 U.S. 551, 561-562, 125
S.Ct. 1183, 161 L.Ed.2d 1 (2005); see also, Thompson v. Oklahoma 487
U.S. 815, 835, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (Stevens, J.
Plurality Opinion) ("[L]ess culpability should attach to a crime committed
by a juvenile than to a comparative crime committed by an adult. The
basis of this conclusion is too obvious to require extensive explanation.
Inexperience. Less intelligence and less education make a teenager less
able to evaluate the consequences of his or her conduct while at the same
time he or she is more apt to be motivated by mere emotion or peer
pressure than as an adult."]

21 For all those reasons, in the circumstances of Petitioner's case, the facts surrounding
22 Petitioner's crime no longer amount to "some evidence" supporting the conclusion that Petitioner
23 would pose an unreasonable risk of danger if released on parole.

24 2.

25 RESPONDENT DEPRIVED PETITIONER DUE PROCESS OF LAW 26 WHERE RESPONDENT DEPRIVED PETITIONER HIS RIGHT TO THE LIBERTY INTEREST CREATED IN PENAL CODE § 3041 (B).

27 The due process clause of the Fourteenth Amendment prohibits a State action that deprives a
28 person of life, liberty, or property, without due process.

1 However, a petition alleging such a violation must establish that he/she: (a) had such a
 2 protection; (b) that Petitioner was deprived such a protection; and (c) that the procedure which led to
 3 the deprivation was Constitutionally insufficient, Kentucky Department of Corrections v. Thompson
 4 490 U.S. 459-460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989); McQuillion v. Duncan 306 F.3d 895,
 5 900 (9th Cir. 2002).

6 2A – B

7 In 1979 the Supreme Court held and reiterated in 1987, that a “state statutory scheme, if it
 8 uses mandatory language, creates a presumption that parole release will be granted when or unless
 9 certain designated findings are made, and thereby, gives rise to a Constitutionally Liberty interest.”
 10 McQuillion v. Duncan, *supra*, 306 F.3d at 109 (citing Greenholtz v. Nebraska Penal Institution 442
 11 U.S. 1, 7, 99 (S.Ct. 2100, 60 L.Ed.2d 668 (1979) and Allen v. Board of Pardons 482 U.S. 369, 373
 12 S.Ct. 2415, 96 L.Ed.2d 303 (1987)).

13 Recently, our Ninth Circuit has held that California’s parole scheme created such a liberty
 14 interest because Penal Code § 3041 uses mandatory language and is similar to the Nebraska and
 15 Montana statute addressed in Greenholtz; Allen; and McQuillion, *supra*.

16 Not only did the Ninth Circuit hold that Penal Code section 3041 “create in every inmate a
 17 cognizable liberty interest in parole which is protected by the procedural safeguard of the due
 18 process clause,” but further held that, “the interest arises upon the incarceration of the inmate,” and
 19 not at parole eligibility. Biggs v. Terhune (9th Cir. 2003) 334 F.3d 910, 914-915.

20 It is true that post-McQuillion the California Supreme Court had occasion to visit and decide
 21 in In re Dannenberg that a prisoner serving a “life” term (or term to life) did not have a liberty
 22 interest in the expectation that the Board of Prison Terms (now the Board of Parole Hearings) will
 23 engage in a “uniform term” analysis under Penal Code Section 3041 (a) if it determines that public
 24 safety concerns warrant denial of parole under Penal Code Section 3041 (b). That Court did not,
 25 however, hold that there is no protected liberty interest in parole whatsoever.

26 Indeed, California Court’s have post-Dannenberg, continued to analyze claims regarding the
 27 denial of liberty. For instance, although de-certified for publication, see In re Shaputis 135
 28 Cal.App.4th 217, 224, 231, Cal.Rptr.3d (citing Dannenberg); In re Scott 133 Cal.App.4th 573, 34

Cal.Rptr.3d 905 (2005); In re Lee 49 Cal.Rptr.3d 931; In re Elkins 50 Cal.Rptr.3d 503, Federal Courts post-Dannenberg have also uniformly (save one court decision in the Eastern District, Sass v. California Board of Prison Terms (E.D. Cal. 2005) 376 F.Supp.2d 975, 982) held to the Ninth Circuit's reasoning in McQuillion, supra. Even the Eastern District, in its very next parole decision review, seemingly reversed itself in Bair v. Folsom State Prison (E.D. 2005) 2005 WL 2219220 fn. 3, Report and Recommendations, adopted by (E.D. Cal.) 2005 WL 3081 634 fn. 1.) Because the Ninth Circuit analyzed the liberty interest which arose from California's parole scheme under Penal Code § 3041 (b) and the Dannenberg decision rest specifically on 3041 (a), Dannenberg does not undermine the Ninth Circuit decision. Therefore, the Ninth Circuit's McQuillion v. Duncan decision holding that the mandatory language of 3041 (b) creates a liberty interest in parole remains precedent [see Rosenkrantz v. Marshall (C.D. Cal. 2006) 444 F.Supp.2d 1063; Blankenship v. Kane 2006 WL * 3 (N.D. Cal. 2006); Machado v. Kane 2005 WL 3299885 * 2 (N.D. Cal. 2005); Murillo v. Perez 2005 WL 2592420 * 3 nt 1 (C.D. Cal. 2005); Saifullah v. Carey 2005 WL 1555389 * (E.D. Cal. 2005.)].

2C

PROCEDURE WHICH LED TO DEPRIVATION OF LIBERTY

It is well a established principle that due process requires a prisoner must be provided notice of the hearing; an opportunity to be heard and a statement of reasons for the denial of parole.

Petitioner agrees that he was provided each of these protections. However, the United States Supreme Court, and others, have continuously held:

"In a variety of contexts, the court has recognized that a governmental decision resulting in a loss of important liberty interest violates due process if the decision is not supported by any evidence." Superintendent v. Hill 472 U.S. at 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985); Rosenkrantz v. Marshall 444 F.Supp.2d 1063 (C.D. Cal. 2006) fn. 13; Rosas v. Nielson 428 F.3d 1232 (9th Cir. 2005) (Per Curiam).

The Court further found:

"Although '[T]he some evidence standard is minimally stringent' Powell v. Gomez 33 F.3d 39, 40, the evidence underlying the [Governor's] decision must have some indicia of reliability." Hill, supra, 472 U.S. at 455-456, 105 S.Ct. at 2774; see also, Sanchez v. Kane (C.D. Cal. 2006) 444 F.Supp.2d 1049.

1 As an additional matter, the Hill Court concluded the decision to deny parole must not be
2 "otherwise arbitrary," as well. Hill, supra, 457.

3 Clearly then, Hill, supra, requires much more than notice, opportunity and the statement of
4 reasons. It also requires: (a) evidence which supports the decision. (b) The evidence must be
5 reliably related to the issue of present dangerousness (Cal. Code Respondent., tit. 15 § 2402 (a); In re
6 Scott, supra, 133 Cal.App.4th 593, 595, 34 Cal.Rptr.3d 905; In re Elkins 50 Cal.Rptr.3d 503; In re
7 Lee 49 Cal.Rptr.3d 931. (c) The evidence must be truthful. (d) The decision cannot be arbitrary or
8 capricious. Sanchez v. Kane, supra, (C.D. Cal. 2006) 444 F.Supp.2d.

9 Here, the decision of the Board comports to none of these mandates. For instance, after five
10 suitability hearings and 17 years in prison the record is void of ant evidence to support the decision.
11 The Board found and relied on primarily on the immutable circumstances of the offense to deny
12 parole (see Exhibit 1 at p. 59). The Board found the crime exhibited an "exceptionally callous
13 disregard for human suffering;" that the crime's motive "was inexplicable." However, keeping in
14 mind Petitioner was an adolescent and had been drinking at the time of the crime, and believed he
15 acted in defense of his brother, the events surrounding the crime (at the time) were neither
16 "exceptionally callous;" indifferent to the feelings of others or lacking in emotional sympathy. An
17 almost casual glance at the evidence shows this case is overflowing in all aspects with each and
18 every emotion depicted above. True, the measure of atrociousness is not general notions of common
19 decency or social norms, for by that yard stick all murders are atrocious, (see In re Scott, supra, 119
20 Cal.App.4th at 891, 15 Cal.Rptr.3d 32, "all Second-degree murders by definition involve some
21 callousness") yet there is no evidence that Petitioner directed any overt anger toward the victim in
22 this case, which did not stem from the circumstances surrounding that exact and clearly spontaneous
23 event. The quarrel earlier that evening was over and all had parted ways. The earlier event, the
24 record reflects, was far from a motivating factor in the murder of the victim, there was no
25 premeditation or egregious torture. Indeed, even the acquiring of a knife from the front yard upon
26 hearing his brother scream for help was not an unconscious act, but fueled by sensitivity and fear for
27 his brother. Petitioner did not seek out or purposely direct any action toward him at all, not
28 withstanding his brother's scream and upon searching for his brother, locating the victim in the

1 vicinity throwing rocks and breaking glass windows. (Exhibit 1, p. 43.) It was an unreasonable
2 conclusion on Petitioner's part to connect his brother's screams, the victim breaking windows in the
3 near vicinity, or even perhaps the events of earlier that evening, to the victim being the reason for the
4 Petitioner's brother's screams. Yet, these "unreasonable" conclusions do make this crime egregious
5 or exceptionally callous, to be sure, such is not the yard stick to measure this case by. The inquiry is
6 whether, among murders, was the murder committed by Petitioner especially callous or particularly
7 heinous, atrocious or cruel. (In re Ramirez (2001) 94 Cal.App.4th 549, 570, 114 Cal.Rptr.2d 381; In
8 re Dannenberg (2005) 34 Cal.App.4th 1061, 1082-83, 1100, 23 Cal.Rptr.3d 417, 104, p. 783.)
9 Clearly, by that Petitioner's crime was even less than common place.

10 Comparing Petitioner's case to others where the Court and Board correctly denied parole
11 based on egregiousness is illuminating. For example, see In re Rosenkrantz, supra, 29 Cal.4th at
12 578; where that petitioner bought and trained with a weapon, laid in wait for the victim to return and
13 after another quarrel shot the victim 10 times because the victim and Petitioner's brother revealed to
14 Rosenkrantz's father that Rosenkrantz is homosexual.

15 Or, In re Dannenberg, supra, 34 Cal.App.4th 1095; where that petitioner reacted with
16 extreme and sustained violence, striking multiple blows to his wife's head with a pipe wrench.
17 While she was helpless, he placed her head in a bathtub full of water or at least leaving it there
18 without assisting her until she was dead.

19 In In re McClendon (2003) 133 Cal.App.4th 315, where that petitioner planned a calculated
20 attack in the middle of the night against his estranged wife. Arriving at his house wearing rubber
21 gloves and carrying a handgun and a wrench, attacked his wife and another victim. (Id. at 321-322,
22 6 Cal.Rptr.3d 278.)

23 In In re Burns (2006) 136 Cal.App.4th 1318, 40 Cal.Rptr.3d 1, where that petitioner being
24 left by his long time girlfriend, lured her to an isolated spot and shot her. He neither summoned nor
25 attempted to provide help. Rather, he went back to his dorm room, got into bed and watched
26 Monday Night Football with his roommate. Meanwhile, the victim, having been shot around 7:00 or
27 8:00 was not found until 9:45, still alive, her body had scratches on it from possibly attempting to get
28 help. She did not die until after midnight. That petitioner had approximately one to two hours in

1 which he could have reconsidered his “disregard for human suffering,” he did not.

2 In In re Van Houten (2004) 116 Cal.App.4th 339; this Petitioner participated in a
3 “premeditated and gratuitous mutilation” of a couple in which the wife was stabbed 42 times and
4 struggled for her life while listening to her husband meet his own gruesome end. (Id. pp. 346, 351,
5 366, 10 Cal.Rptr.3d 406.)

6 In In re Deluna (2005) 126 Cal.App.4th 585; this petitioner fought with the victim outside a
7 bar, retrieved a rifle and shot the victim in the mouth and then deliberately stalked the defenseless
8 victim through the parking lot, firing at him until he died. See also In r Lowe 130 Cal.App.4th 1405,
9 31 Cal.Rptr.3d 1; In re Morrall (2002) 102 Cal.App.4th 280, 125 Cal.Rptr.2d 391.

10 Petitioner’s crimes do not measure against the forgoing offenses as “especially heinous,
11 atrocious or cruel.” Petitioner’s crime does not even measure up against the less cruel and egregious
12 cases of In re Smith 114 Cal.App.4th 343; In re Lee, supra, or In re Elkins, supra.

13 Was the crime callous? Yes. However, are the facts of this crime some evidence that
14 Petitioner acted with “exceptionally callous disregard for [the victim’s suffering] or do the acts of
15 the crime distinguish this crime from other second-degree murders as exceptionally callous? No.

16 Besides not being especially atrocious, heinous or callous, Petitioner’s crime has little, if any
17 predictive value for future criminality. Simply by the passing of time, Petitioner’s crimes almost 18
18 years ago have lost much of their usefulness in foreseeing the likelihood of future offenses. (In re
19 Scott, supra). Moreover, Petitioner’s spontaneous motivation for the murder- in defense of his
20 brother after an earlier quarrel with other kids in the community – his young age and post-conviction
21 behavior argue against any future offenses. As one explained “a defendant’s motivation for the
22 offense tends to show suitability when it was the result of stress in his life, especially if the stress has
23 built over a long period of time. (In re Scott 133 Cal.App.4th 573, 595, 34 Cal.Rptr.3d 905.)

24 Here, as previously mentioned, Petitioner was bullied all his life due to his small stature and
25 “picked on” relentlessly. That proved to be not much different in that once again a quarrel rose
26 between Petitioner, his brother, and several neighborhood residents. A short while later, after
27 several more drinks, Petitioner thought he heard his brother scream for help. Petitioner ran to aide
28 his brother and came upon the victim coming the other way, smashing windows out of parked cars,

1 and the homicide occurred.

2 Instead of being atrocious, Petitioner's conduct involved no more then what was necessary to
 3 commit the crime. (In re Rosenkrantz 29 Cal.4th at p. 683, 128 Cal.Rptr.2d 104, 59 p. 174.) As a
 4 recent court proclaimed, the Board "cannot deny parole based on nature of offenses if defendant's
 5 acts were the bare minimum needed to commit the offense." (See In re Lee Cal.Rptr.3d 931.) In In
 6 re Lee, the Court concluded that Lee's 15 minute drive; the taking of a gun and a box of ammunition
 7 are not factors relative to egregiousness or callousness. The Court stated specifically that
 8 "pondering what one is about is the essence of premeditation," but that [Lee's] "premeditation was
 9 not elaborate or prolonged" compared to the instance case where in a split second Petitioner heard
 10 the screams for help from his brother and made the decision to assist, Petitioner grabbed the knife and
 11 ran. The victim was stabbed twice during the heat of the struggle and Petitioner left the scene. The
 12 level of egregiousness present in this case is clearly less than which was present in Lee and certainly
 13 other murders. If the Board cannot point to factors in the record to establish how: (a) this crime is
 14 "particularly" or "especially" heinous, atrocious or cruel and callous; or (b) that Petitioner
 15 "currently" poses an unreasonable risk of danger to the public then the Board's decision to deny
 16 parole for the fifth time is "otherwise arbitrary and capricious under clearly established federal law
 17 and principles outlined in Superintendent v. Hill (and other California cases too numerous to
 18 mention.) The Board pointed to no evidence substantiating either necessity cited and nor did they
 19 point to any evidence let alone "some evidence" pinpointing post-conviction factors that Petitioner's
 20 past use of alcohol somehow made him a risk of danger today.

21 Clearly, the decision to deny parole was unreasonable and therefore violates due process and
 22 the liberty interest in the expectation of parole.

23 3

24 PETITIONER WAS DENIED DUE PROCESS OF THE LAW WHERE
 25 THE BOARD FAILED TO BASE ITS DECISION TO DENY PAROLE
 26 FOR THE FIFTH TIME ON RELEVANT AND RELIABLE
 27 EVIDENCE. RATHER, THE BOARD RELIED UPON FACTORS OF
 28 THE COMMITMENT OFFENSE POSSESSING NO INDICIA OF
 RELIABILITY RELATING TO THE ISSUE OF PRESENT
 DANGEROUSNESS. (Superintendent v. Hill; Rosenkrantz v. Marshall;
In re Lee; In re Elkins.)

1 An independent review of the record, as previously stated, shows that the only factor that
2 could otherwise arguably provide a basis for a finding that Petitioner's crime was particularly grave
3 and Petitioner poses a present danger is his alcohol use prior to and during the crime.

4 As the Board found in its decision (Exhibit 1, pp. 59-63), (1) Petitioner had a prior record
5 (juvenile) consisting of misdemeanor alcohol and property crimes, but no violence related crimes
6 (see Cal. Code Regs., tit. 15 § 2402 (d)) either as a juvenile or adult, save the instant offense. (2)
7 That Petitioner is disciplinary free (see Exhibit 1, pp. 60-61). (3) Petitioner's Psychological
8 Evaluation is supportive of release, but "conditioned upon continued abstinence from alcohol." (4)
9 Petitioner's parole plans are appropriate in that he has a residence and available employment, good –
10 very strong – family support. (*Id.*, at 61.)

11 There was no evidence in the record to which the Board could point which reasonably or
12 unreasonably supports a claim of present dangerousness.

13 The controlling regulation specifically identifies five factors to be considered in the
14 determination. For instance: (a) The offense was carried out in a manner which demonstrates an
15 exceptionally callous disregard for human suffering. (b) Multiple victims were attacked. (c) The
16 offense was carried out in a dispassionate and calculated manner, such as an execution style murder.
17 (d) The victim was abused, defiled or mutilated during or after the offense. (e) The motive was
18 inexplicable or very trivial in relation to the offense. (See Cal. Code Regs., tit. 15 § 2402
19 (c)(a)(A)(E).

20 For lack of more serious factors to point to, the Board seemed to imply on numerous
21 occasions that because Petitioner committed the crime as a result of alcohol abuse and/or use, that
22 the crime was "carried out in a manner which demonstrates a total disregard for human suffering."
23 This finding is wholly unsupported by the record and evidence, and is therefore arbitrary. Similarly,
24 any conclusion that a crime committed by a then active abuser or user of alcohol over the age of 18
25 and of itself demonstrates that an individual currently possess a threat to public safety would be
26 without evidentiary support in the record and otherwise arbitrary.

27 There is no evidence that Petitioner's alcohol use exacerbated the crime. The manner in
28 which Petitioner committed this offense (under the influence) nor any other case factor, then and

1 now, reflects calculation or dispassion. Rather, a manifestation of alcoholism or abuse, which
 2 significantly impacted his judgment. The addiction or use does not relieve Petitioner of
 3 responsibility, but pinpoints the inability to classify this crime as one of cold calculation or
 4 dispassion. If indeed an act committed as a result of addiction or use can be called callous – rather
 5 than compulsive – at all, it still doesn't render the offense remotely more callous than other similar
 6 crimes. Furthermore, even had the use and/or addiction of alcohol at the time of the offense
 7 constitute "egregiousness" it would not constitute "some evidence" today sufficient to substantiate
 8 Petitioner currently, or at the time of the 2006 suitability hearing poses a danger under California
 9 law.

10 Penal Code § 3041 and Cal. Regs., tit. 15 §§ 2402 and 2404 (a) cannot be denied or set aside
 11 "unless" the record shows that Petitioner presented a danger to society at the time of his hearing. (In
 12 re Dannenberg 34 Cal.App.4th at 1071, 1081.) In assessing "present dangerousness" drug addiction
 13 and alcoholism is analogous to a mental disorder. To determine and demonstrate that an individual
 14 who committed crime due to such a disorder constitutes a present danger one cannot merely state
 15 that Petitioner suffered such a disorder at the time of the offense. Rather, it must be shown that at
 16 the time of the hearing Petitioner still suffered from the disorder to the extent he remains a present
 17 danger and that his addiction is active at the time of the hearing, as stated by the Court in In re Lee,
 18 supra, 49 Cal.Rptr.3d 931, stating the Board:

19 "Must focus their parole decisions on whether a prisoner continues to
 20 pose an unreasonable risk to public safety. Such a practical inquiry,
 21 rooted in real world crime and law and order, has no obvious intersection
 22 with the incorporated realm of legal constricts."

23 Her, as in the Lee, supra, case, Petitioner did not intend to kill the victim and did not act in a
 24 manner beyond the minimum necessary to commit the murder. Any contrary conclusion lacks any
 25 evidentiary support to deny parole; the reason must relate to Petitioner's continued unreasonable risk
 26 to public safety. Simply put, the record is void of any such evidence. The test is not whether some
 27 evidence supports the reasons the Board cites for denying parole, but whether some evidence
 28 indicates a parolee's release unreasonably endangers public safety. Cal. Code Regs tit., 15 § 2402
 (a); In re Scott (2005) 133 Cal.App.4th 573, 595, 34 Cl.Rptr.3d 905.

PETITIONER IS BEING DENIED DUE PROCESS OF LAW BY THE BOARD'S RELIANCE ON THE IMMUTABLE FACTORS OF THE COMMITMENT OFFENSE, FOR THE FIFTH TIME, TO DENY PAROLE WHEN SAID FACTORS DO NOT RISE TO THE LEVEL OF EGREGIOUSNESS AND CALLOUSNESS CONTEMPLATED BY LAW. (Irons v. Warden; Bair v. Folsom; In re Lee; In re Elkins; In re Scott.)

Petitioner's sole motivation for confronting and combining the victim in this case (which resulted in the victim's death) was not the intent to kill, rather the protection of his little brother. Petitioner, at no time, harbored the intent to kill or even rationally thought, at the time, murder was a possibility. Accordingly, he did not act in a manner beyond the minimum necessary to commit murder or convict Petitioner of second-degree murder (In re Lee, *supra*, 49 Cal.Rptr.2d 931).

The assumption that a prisoner can be denied parole solely on the basis of the commitment offense is correct. However, the proposition must be properly understood. The commitment offense is one of only two factors of suitability prisoner cannot change. Reliance on such an immutable factor without regard to or consideration of subsequent circumstances (post conviction) may be unfair and runs contrary to the rehabilitative goals espoused by the prison system. Thus, the commitment offense can negate suitability only if the circumstances of the crime, reliably established in the record, that Petitioner will present a current and unreasonable risk to public safety if released. In re Elkins, *supra*, 50 Cal.Rptr.3d 503; Biggs v. Terhune 334 F.3d at 9195; In re Scott 133 Cal.App.4th at 594-595. Yet the predictive value of the commitment offense may vary questionable after a long period of time. Thus, denials based on such immutable factors warrant especially close scrutiny. (In re Scott, *supra*.)

In the instructive case of Irons v. Warden (E.D. Cal. 2005) 358 F.Supp.2d 936 (Irons) (App.pending sub.nom.); Irons v. Caey (9th Cir. 2005) F.3d 1165 No. 05-15275, that petitioner, like here, had appeared for his fifth suitability hearing and found unsuitable for parole. That petitioner is serving a 25 years to life sentence and the facts of his crime were far worse than those now before the Court. There, as here, the Board relied on both the factors of the commitment offense and his drug use at the time of the crime. That Petitioner killed a fellow boarder for stealing from the landlord. After an argument, [Irons] loaded a handgun, went into the victim's room, fired 12 rounds into him

1 and said he was going to let him bleed to death. When the victim complained of the pain [Irons]
2 stabbed him twice in the back. Later [Irons] borrowed a car and drove the body to an isolated
3 coastal location and released the body into the surf. In that case the Court wrote:

4 “[Important] in assessing any due process violation is the fact that
5 continued reliance on unchanging circumstances transforms an offense
6 for which California law provides eligibility for parole into de facto life
7 imprisonment without the possibility of parole ... The circumstances of
8 the crime will always be what they were, and Petitioner’s motive will
9 always be trivial. Petitioner has no hope for ever obtaining parole except
10 perhaps that a panel in the future will arbitrarily hold that the
11 circumstances were not that serious or the motive was more than trivial.”

12 “To a point, it is true,” the Court observed:

13 “The circumstances of the crime and motivation for it may indicate a
14 Petitioner’s instability, cruelty, impulsiveness, violent tendencies and the
15 like. However, after fifteen or so years in the California life, not an ideal
16 therapeutic environment to say the least, and after repeated
17 demonstrations that despite the recognizable hardships of prison life, this
18 Petitioner does not possess those attributes, the predictive ability of the
19 circumstances of the crime is near zero.” (*Id.*, *Irons, supra*, 358
20 F.Supp.2d at 947 fn. 2.)

21 The facts of this case are just as old and far less egregious, Petitioner has appeared before the
22 Board the same amount of time and the evidentiary support for a conclusion of unsuitability are just
23 as lacking.

24 The Board, as previously stated, cite to no factors in the blanket assertion that Petitioner’s
25 crime constituted an exceptionally callous disregard for human suffering, save the use of alcohol
26 before and at the time of the crime. The Board cited to no evidence of calculation or intent, nor
27 could they. The immutable factors of this case are simply not “some evidence” to either deny parole
28 or find Petitioner to be a current threat to public safety. The Board cited no evidence of current
threat based on continued use of alcohol, nor could they. Their record is void of any, let alone “some
evidence” sufficient to deny parole, they cited to no circumstances reliably sufficient to demonstrate
that this case is “especially grave” or particularly so. The facts of this case simply do not constitute
evidence sufficient, after 18 years and five suitability hearings, to deny parole.

29 CONCLUSION

30 Petitioner has both a statutory and Constitutionally protected expectation to parole, that
31 attached at the time of sentencing, To which he was denied by the failure of the Board to find

1 suitability and set a parole release date at his August 2006 parole suitability hearing.

2 The Parole Board reached their conclusion to deny parole on less than some evidence and
3 evidence possessing no indicia of reliability to the instant question before it concerning Petitioner's
4 current danger to public safety.

5 The Board failed to consider Petitioner's age and adolescence at the time of the crime, which
6 constructively reduced both Petitioner's likelihood of committing future crimes and predictability of
7 future dangerousness.

8 Petitioner is entitled to the issuance of a writ of habeas corpus and prays such a writ is issued.

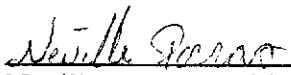
9 PRAYER

10 Comes now Petitioner, Neville Porras, prays that, good cause appearing, this Court:

- 11 1. Grant the Petition For Writ Of Habeas Corpus;
12 2. Issue an Order to Show Cause;
13 3. Grant an Evidentiary Hearing;
14 4. Appoint Counsel;
15 5. Order Petitioner back to the Board within 30 days and in accordance to this Court's
16 direction, order Petitioner to be found suitable and set a parole release date for Petitioner.
Alternatively, order Petitioner brought before this Court for release.

17
18
19 Dated: June 9, 2008

Respectfully submitted,

20
21
22 
23 Neville Porras, Petitioner
24 In pro per
25
26
27
28

CV 08 3006

CW

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(C.C.P. §§ 1013(A), 2015,5)

E-filing

I, Neville Porras, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterrey, State of California. My prison address is:

Neville Porras, CDCR #: E37606
CORRECTIONAL TRAINING FACILITY
P.O. BOX 689, CELL #: YW-337
SOLEDAD, CA 93960-0689.

On 6-9-08, I served the attached:

PETITION FOR WRIT OF HABEAS CORPUS

AND SUPPORTING MEMORANDUM OF
AND AUTHORITIES AND EXHIBITS

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff), with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named institution in which I am presently confined. The envelope was addressed as follows:

ATTORNEY GENERAL'S OFFICE
455 Golden Gate Ave
San Francisco, California

94104

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 6-9-08.

Neville Porras

Declarant

FILED
08 JUN 18 PM 2:32
CLERK OF DISTRICT COURT
SACRAMENTO, CALIFORNIA

E-filing

CV 08 3006

CW

(PR)

EXHIBIT "A"

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration) CDC Number E-37606
Hearing of:)
NEVILLE PORRAS)
_____)

CORRECTIONAL TRAINING FACILITY
SOLEDAD, CALIFORNIA
AUGUST 15, 2006

PANEL PRESENT:

Mr. James Davis, Presiding Commissioner
Ms. Noreen Blonien, Deputy Commissioner

OTHERS PRESENT:

Mr. Neville Porras, Inmate
Mr. Patrick Sparks, Attorney for Inmate
Ms. Valli Israels, Deputy District Attorney
Mr. Ed Martinez, Commissioner, Observer
Correctional Officer(s), Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

**INMATE
COPY**

Marsha Mees

Vine, McKinnon & Hall

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1

P R O C E E D I N G S

[Thereupon, malfunction with microphones and/or recording equipment resulted in excessive inaudibles.]

DEPUTY COMMISSIONER BLONIEN: We're on record.

PRESIDING COMMISSIONER DAVIS: This is a subsequent parole consideration for Neville Porras.

INMATE PORRAS: Neville.

PRESIDING COMMISSIONER DAVIS: N-E-V-I-L-L-E. CDC number E-37606. Today is August 15, 2006. We're located at the Correctional Training Facility at Soledad. Inmate was received on December 1, 1989 from San Joaquin County. The life term began on December 1, 1989 with a minimum eligible parole date of May 6, 1999. The controlling offense for which the inmate's been committed is murder second with use of a deadly weapon, a knife, case number 43369, count one, Penal Code section 187 second slash 12022 paren (b). The inmate received a term of 16 years to life. This hearing is being tape recorded. And for the purposes of voice identification we'll each state our first and last name, spelling the last name and when it reaches you, sir, if you'll also give your CDC number please. So I'll start and move to my left. I'm James Davis, D-A-V-I-S, Commissioner.

DEPUTY COMMISSIONER BLONIEN: Noreen Blonien, B-L-O-N-I-E-N, Deputy Commissioner.

DEPUTY DISTRICT ATTORNEY ISRAELS: Valli Israels,

1 I-S-R-A-E-L-S, Deputy District Attorney, San Joaquin
2 County.

3 **ATTORNEY SPARKS:** Patrick Sparks, S-P-A-R-K-S,
4 attorney for Mr. Porras.

5 **INMATE PORRAS:** Neville Porras, P-O-R-R-A-S,
6 E-37606.

7 **PRESIDING COMMISSIONER DAVIS:** All right. Thank
8 you.

9 **COMMISSIONER MARTINEZ:** Ed Martinez,
10 M-A-R-T-I-N-E-Z, Commissioner, observer.

11 **PRESIDING COMMISSIONER DAVIS:** All right. Thank
12 you. Let the record also reflect that we're joined by
13 two correctional officers today who are here for security
14 purposes only and will not be actively participating in
15 this hearing. Mr. Porras, in front of you in the
16 laminated piece of paper is the Americans With
17 Disabilities Act statement. Would you please read that
18 out loud, sir.

19 **INMATE PORRAS:**

20 "ADA, Americans With Disabilities Act. The
21 Americans With Disabilities Act, ADA, is a law
22 to help people with disabilities. Disabilities
23 are problems that make it harder for some
24 people to see, hear, breathe, walk, talk,
25 learn, think, work or take care of themselves
26 than it is for others. Nobody can be kept out
27 of the public places or activities because of a

1 disability. If you have a disability, you have
2 the right to ask for help to get ready for your
3 BPT hearing, get to the hearing, talk, read
4 forms and papers and understand the hearing
5 process. BPT will look at -- look at what you
6 asked for to make sure that you have a
7 disability that is covered by the ADA and that
8 you have asked for the right kind of help. If
9 you do not get help or think you -- or don't
10 think you got the kind of help you need, ask
11 for a BPT 1074 Grievance Form. You can also
12 get help to fill it out."

13 **PRESIDING COMMISSIONER DAVIS:** All right. Thank you.
14 very much. And according to our records, in cooperation
15 with the staff here at the institution on March 10, 2006
16 you reviewed and signed a BPT Form 1073 indicating that
17 you do not have any disabilities that would qualify under
18 the Americans With Disabilities Act. Is that correct,
19 sir.

20 **INMATE PORRAS:** (Inaudible).

21 **PRESIDING COMMISSIONER DAVIS:** Has anything changed
22 since then?

23 **INMATE PORRAS:** No.

24 **PRESIDING COMMISSIONER DAVIS:** All right. You were
25 able to read that without glasses. Do you normally wear
26 glasses?

27 **INMATE PORRAS:** Yeah, I wear glasses everyday.

1 **PRESIDING COMMISSIONER DAVIS:** Do you wear them to
2 read?

3 **INMATE PORRAS:** Yeah.

4 **PRESIDING COMMISSIONER DAVIS:** Did you bring them
5 with you today?

6 **INMATE PORRAS:** No, I didn't.

7 **PRESIDING COMMISSIONER DAVIS:** Okay. But you were
8 able to read the document very well. So they're just
9 kind -- you just need them for a little help.

10 **INMATE PORRAS:** Yeah.

11 [Thereupon, a portion of the hearing was unavailable
12 for transcription.]

13 **PRESIDING COMMISSIONER DAVIS:** Okay. If you are
14 asked to read something or review something today that --
15 that you can't read, please let us know and we'll make
16 sure we have an accommodation for you. Did you have your
17 glasses with you when you reviewed your C-File?

18 **INMATE PORRAS:** No.

19 **PRESIDING COMMISSIONER DAVIS:** Were you able to read
20 everything all right in your C-File?

21 **INMATE PORRAS:** Yes.

22 **PRESIDING COMMISSIONER DAVIS:** Okay. Just be sure
23 and carry those around next time.

24 **INMATE PORRAS:** (Inaudible) broken.

25 **PRESIDING COMMISSIONER DAVIS:** Okay. All right.
26 They're broken. So you got a new pair on order?

27 **INMATE PORRAS:** Yes.

1 **PRESIDING COMMISSIONER DAVIS:** All right. But you
2 were able to review your C-File?

3 **INMATE PORRAS:** Yes.

4 **PRESIDING COMMISSIONER DAVIS:** All right. And
5 you're able to hear me all right and you got here today
6 under your own power. You walked here all right?

7 **INMATE PORRAS:** Yes.

8 **PRESIDING COMMISSIONER DAVIS:** All right. Is there
9 any reason that you can think of that you would not be
10 able to actively participate in this hearing today?

11 **INMATE PORRAS:** (Inaudible).

12 **PRESIDING COMMISSIONER DAVIS:** All right. Very
13 well. Counsel, you're satisfied with that as well?

14 **ATTORNEY SPARKS:** Yes.

15 **PRESIDING COMMISSIONER DAVIS:** Very well. This
16 hearing is being conducted pursuant to Penal Code
17 sections 3041 and 3042 and the rules and regulations of
18 the Board of Prison Terms governing parole consideration
19 hearings for life inmates. The purpose of today's
20 hearing is to once again consider the number and nature
21 of the crimes for which you were committed, your prior
22 criminal and social history and your behavior and
23 programming since your commitment. We've had the
24 opportunity to review your Central File and your prior
25 transcripts and you will be given an opportunity to
26 correct or clarify the record as we proceed. We will
27 reach a decision today and inform you whether or not we

1 find you suitable for parole and the reasons for our
2 decisions. If you are found suitable for parole, the
3 length of your confinement will be explained to you.
4 Nothing that happens here today will change the findings
5 of the court. The Panel is not here to retry the case.
6 We are here for the sole purpose of determining your
7 suitability for parole. Do you understand that, sir?
8 This hearing will be conducted in two phases. First I
9 will discuss with you the crime for which you were
10 committed as well as your prior criminal and social
11 history. Then Commissioner Blonien will then discuss
12 with you your progress since your commitment, your
13 counselor's report, psychological evaluation, your parole
14 plans and any letters of support or opposition as they
15 may exist. Once that's concluded, the Commissioners, the
16 District Attorney and then your attorney will be given an
17 opportunity to ask you questions. Questions that come
18 from the District Attorney will be asked to the Chair and
19 then you'll respond back to the Panel with your answer.
20 Following that, the District Attorney and then your
21 attorney will be given an opportunity for a final closing
22 statement. Your statement, which follows theirs, should
23 focus on your suitability for parole. The California
24 Code of Regulations states that regardless of time served
25 a life inmate shall be found unsuitable for and denied
26 parole if in the judgment of the Panel the inmate would
27 pose an unreasonable risk of danger to society if

1 released from prison. Now you have certain rights.
2 Those rights include the right to a timely notice of this
3 hearing, the right to review your Central File and the
4 right to present relevant documents. Counselor, are you
5 satisfied that your client's rights have been met to
6 date?

7 **ATTORNEY SPARKS:** Yes. Thank you.

8 **PRESIDING COMMISSIONER DAVIS:** You have an
9 additional right. That is the right to be heard by an
10 impartial Panel. Now you've heard Commissioner Blonien
11 and I introduce ourselves today. Is there any reason for
12 you to believe that we would not be impartial?"

13 **INMATE PORRAS:** That's a hard one. I don't know
14 either one of you personally or had any contact with you
15 before but there's a lot of things that go around about
16 the Parole Board and I can only (inaudible) on what's on
17 record (inaudible).

18 **PRESIDING COMMISSIONER DAVIS:** So I guess that's
19 really the crux of it. You have had no contact with
20 either Commissioner Blonien or I before?

21 **INMATE PORRAS:** No.

22 **PRESIDING COMMISSIONER DAVIS:** And to the best of
23 your knowledge we have no connection with your case
24 whatsoever?

25 **INMATE PORRAS:** (Inaudible) BPT (inaudible) members
26 before.

27 **PRESIDING COMMISSIONER DAVIS:** Yes.

1 **INMATE PORRAS:** (Inaudible) somehow you do have
2 knowledge of my case (inaudible) --

3 **PRESIDING COMMISSIONER DAVIS:** Well, certainly, as
4 we've already stated. Yes.

5 **INMATE PORRAS:** (Inaudible).

6 **PRESIDING COMMISSIONER DAVIS:** Okay. Other than
7 that, is there any reason for you to believe that we
8 would not be impartial?

9 **INMATE PORRAS:** No.

10 **PRESIDING COMMISSIONER DAVIS:** All right. Thank
11 you.

12 **DEPUTY COMMISSIONER BLONIEN:** Mr. Davis, may I turn
13 this down a little bit. I can't hear.

14 **PRESIDING COMMISSIONER DAVIS:** Sure. Why don't you
15 go ahead and turn that off, officer, we'll just have to
16 suffer through. You will receive a written copy of our
17 tentative decision today. That decision becomes
18 effective within 120 days. A copy of the decision and a
19 copy of the transcript will be sent to you and you will
20 have -- Well, the Board has eliminated its appeal
21 process. If you disagree with anything that occurs in
22 today's hearing, you have the right to go directly to
23 court with your complaint. You are not required to admit
24 your offense nor discuss your offense. However, the
25 Panel once again does accept the findings of the court to
26 be true. Do you understand that, sir?

27 **INMATE PORRAS:** (Inaudible).

1 **PRESIDING COMMISSIONER DAVIS:** All right. And
2 Commissioner Blonien, are we going to be dealing with
3 anything from the confidential file today?

4 **DEPUTY COMMISSIONER BLONIEN:** There's -- No
5 confidential information will be used today.

6 **PRESIDING COMMISSIONER DAVIS:** I'm going to pass the
7 checklist of documents to both counsel. If you'll take a
8 look at that and make sure we're operating off the same
9 list of documents.

10 **ATTORNEY SPARKS:** I have these. Thank you.

11 **DEPUTY DISTRICT ATTORNEY ISRAELS:** Yes, I do
12 (inaudible).

13 **PRESIDING COMMISSIONER DAVIS:** All right. That'll
14 be marked Exhibit One then. Counsel, anything additional
15 you'd like us to consider today?

16 **ATTORNEY SPARKS:** No.

17 **PRESIDING COMMISSIONER DAVIS:** Any preliminary
18 objections?

19 **ATTORNEY SPARKS:** No.

20 **PRESIDING COMMISSIONER DAVIS:** Will your client --
21 Will your client be speaking with us today?

22 **ATTORNEY SPARKS:** Yes.

23 **PRESIDING COMMISSIONER DAVIS:** All right. If you'd
24 raise your right hand then please, sir. Do you solemnly
25 swear or affirm that the testimony you will give at this
26 hearing will be the truth and nothing by the truth? All
27 right. For a summary of the crime, I'm going to refer to

1 the Court of Appeals document starting on page three
2 where it states under the heading facts.

3 "Late in the evening on August 11 and early in
4 the morning of August 12, 1988 the victim Shawn
5 Bartholomew, B-A-R-T-H-O-L-O-M-E-W, and his
6 friend Cosmo Alan Byrd, B-Y-R-D, got drunk with
7 some friends under Waterloo Bridge. The victim
8 and Byrd went to Waterloo Liquors where Byrd
9 left the victim to return home. Byrd hear
10 someone yell quote 'come here' close quotes as
11 he walked away from the liquor store. He
12 turned around and saw someone who resembled the
13 defendant running. Byrd continued home.
14 During the same night, the defendant was in his
15 front yard drinking with his brother Willie
16 Lester, L-E-S-T-E-R, and Lester's friend Mike
17 Garcia, G-A-R-C-I-A. William quote --
18 quote/unquote 'Moose' Phillips,
19 P-H-I-L-L-I-P-S, and Dennis quote/unquote
20 'Scooter' Wheeler, W-H-E-E-L-E-R, passed in
21 front of the house and exchanged angry words
22 with defendant. Phillips and Wheeler left but
23 defendant and his group armed themselves,
24 defendant with a butcher knife, and enlisted
25 the aid of another friend James Azevedo,
26 A-Z-E-V-E-D-O. The group began searching for
27 Phillips but without success. All but Lester

1 returned to defendant's front yard. Shortly
2 after they returned, they heard yelling from
3 the alley. The voice sounded to them like
4 Lester's, although Lester denied later that it
5 was he. After hearing the yell, defendant left
6 alone to look for his brother. Eventually
7 defendant saw the victim and chased him down.
8 Defendant held the victim by the hair and said
9 quote 'where's my brother, where's my brother'
10 close quotes. Lester and Garcia arrived after
11 defendant caught the victim. Lester hit the
12 victim with a stick and Garcia kicked the
13 victim in the head. Defendant was the only one
14 in the group with a knife and he later admitted
15 to law enforcement he stabbed the victim. The
16 group left the victim and returned to the
17 defendant's yard. Paramedics responded to the
18 scene and found the bloodied victim lying in
19 the fetal position. The victim died of a stab
20 wound with a pierce -- which pierced his heart,
21 liver and right lung."

22 And the -- according to the July 2006 Board report under
23 prisoner versions it says:

24 "Porras's version -- Porras's version is
25 initially (inaudible) from the first dated
26 offense summary. In that version, Porras heard
27 Ray L. parenthesis (Porras's younger brother)

1 close parenthesis scream out. He saw a broken
2 knife parenthesis (blade with -- with no
3 handle) close parenthesis lying on the ground
4 and he was running to where the yells were
5 coming from."

6 Yes?

7 **ATTORNEY SPARKS:** Since we have him here and he's
8 going to talk about it, why don't we go with a different
9 version rather than the one that the correctional
10 counselor has. That --

11 **PRESIDING COMMISSIONER DAVIS:** Well this is the --
12 Did you have an interview with your correctional
13 counselor?

14 **INMATE PORRAS:** Yeah.

15 **PRESIDING COMMISSIONER DAVIS:** Is this the version
16 that you gave your correctional counselor?

17 **INMATE PORRAS:** No.

18 **PRESIDING COMMISSIONER DAVIS:** It's different?

19 **INMATE PORRAS:** Yes. I never talked with her about
20 the crime. (Inaudible) took that and written it off of
21 the other counselor reports.

22 **PRESIDING COMMISSIONER DAVIS:** So you've never
23 discussed with your correctional counselor the version --
24 your version of the crime even though there's -- there's
25 a change?

26 **INMATE PORRAS:** (Inaudible).

27 **PRESIDING COMMISSIONER DAVIS:** All right. What is

1 your version of the crime?

2 INMATE PORRAS: It's pretty much what she wrote.

3 PRESIDING COMMISSIONER DAVIS: Well why don't you go
4 ahead and tell me.

5 INMATE PORRAS: Well I (inaudible) pick up
6 (Inaudible).

7 PRESIDING COMMISSIONER DAVIS: Okay.

8 INMATE PORRAS: I did run over there and I swung it
9 at (inaudible).

10 PRESIDING COMMISSIONER DAVIS: Okay.

11 INMATE PORRAS: I didn't go hunting (inaudible) I
12 just picked it up. I don't know why. I didn't think
13 about why I did it but I did pick up the knife and swing
14 it at him.

15 PRESIDING COMMISSIONER DAVIS: Did you stab him?

16 INMATE PORRAS: Apparently so.

17 PRESIDING COMMISSIONER DAVIS: How much had you been
18 drinking that night?

19 INMATE PORRAS: Quite a lot. I did buy a case of
20 beer but I didn't really count how many I was drinking.
21 I'd just drink them as I went along.

22 PRESIDING COMMISSIONER DAVIS: Okay. Were you --
23 Well were you drinking any -- did you -- Did you drink on
24 a regular basis?

25 INMATE PORRAS: (Inaudible) weekend (inaudible).

26 PRESIDING COMMISSIONER DAVIS: On the weekends.

27 INMATE PORRAS: (Inaudible).

1 **PRESIDING COMMISSIONER DAVIS:** And was this a
2 weekend?

3 **INMATE PORRAS:** No, it was a Thursday night.

4 **PRESIDING COMMISSIONER DAVIS:** Thursday night. So
5 this would have been an unusual circumstance? Okay.

6 **INMATE PORRAS:** I was working on my car that night.
7 There was nobody else so I figured that (inaudible).

8 **PRESIDING COMMISSIONER DAVIS:** According to the
9 probation officer report, and I'll just read you what he
10 says.

11 "The defendant reported that he started
12 drinking or consuming alcohol at the age of 15.
13 In 1984 he was consuming four 48-ounce bottles
14 of King Cobra on a daily basis. At the present
15 time, which would have been at the time this
16 report was prepared, he will frequently consume
17 a case of beer and a fifth of Jack Daniels
18 every other night and on two nights during the
19 weekend he will consume a case of beer and
20 three wine coolers."

21 **INMATE PORRAS:** (Inaudible) just thinking about the
22 amount of alcohol they're talking about and the price
23 (inaudible) where would I get that much money from.

24 **PRESIDING COMMISSIONER DAVIS:** Well I don't know,
25 that's --

26 **INMATE PORRAS:** (Inaudible).

27 **PRESIDING COMMISSIONER DAVIS:** Yeah, we don't know

15

1 that. That's only what -- what you claim in your report
2 in here.

3 INMATE PORRAS: Yeah, that's a (inaudible) --

4 PRESIDING COMMISSIONER DAVIS: Okay. So how much
5 were you drinking? What I'm trying to get to --

6 INMATE PORRAS: Yeah.

7 PRESIDING COMMISSIONER DAVIS: -- you being rather,
8 I don't -- I don't -- say you're being evasive but I'm
9 trying to get to how much you had been drinking that
10 night.

11 INMATE PORRAS: Yeah, I'd say almost a case -- a
12 little over a 12-pack.

13 PRESIDING COMMISSIONER DAVIS: Well, okay. So you
14 had a little over a 12-pack of what size?

15 INMATE PORRAS: (Inaudible) just the regular cans
16 (inaudible) Budweiser.

17 PRESIDING COMMISSIONER DAVIS: Okay. Are we talking
18 about the tall Budweiser's? The 12-ounce, 16-ounce?

19 INMATE PORRAS: (Inaudible) the 12-ounce I think it
20 is.

21 PRESIDING COMMISSIONER DAVIS: Okay.

22 INMATE PORRAS: (Inaudible).

23 PRESIDING COMMISSIONER DAVIS: And you had about 12
24 of those you think?

25 INMATE PORRAS: Yeah.

26 PRESIDING COMMISSIONER DAVIS: Okay. Had you had
27 any drugs that day?

1 INMATE PORRAS: No.

2 PRESIDING COMMISSIONER DAVIS: Had you had any hard
3 liquor that day?

4 INMATE PORRAS: No.

5 PRESIDING COMMISSIONER DAVIS: Okay. You said you
6 were working on your car?

7 INMATE PORRAS: Yes.

8 PRESIDING COMMISSIONER DAVIS: So you were able to
9 take small pieces and put them back where they belong or
10 something --

11 INMATE PORRAS: Yes.

12 PRESIDING COMMISSIONER DAVIS: -- on your car?

13 INMATE PORRAS: Yes.

14 PRESIDING COMMISSIONER DAVIS: You felt confident in
15 doing that kind of small work?

16 INMATE PORRAS: Yes.

17 PRESIDING COMMISSIONER DAVIS: Even after you'd been
18 drinking as much as you had?

19 INMATE PORRAS: Yes.

20 PRESIDING COMMISSIONER DAVIS: Is there a reason why
21 then you can't remember one way or the other whether you
22 stabbed the victim or not?

23 INMATE PORRAS: Well I know I swung the knife. I
24 know it hit him but I don't know how many times
25 (inaudible). I swung twice and it didn't feel like -- it
26 wasn't like (inaudible) say a (inaudible) it didn't feel
27 like I made contact.

17

1 **PRESIDING COMMISSIONER DAVIS:** When you talk about
2 swinging a knife, most people think about it almost like
3 a slicing motion.

4 **INMATE PORRAS:** Yes.

5 **PRESIDING COMMISSIONER DAVIS:** But when -- And I
6 know at the last hearing one of the issues discussed was
7 whether or not the coroner's report, you know, or to get
8 a copy of the coroner's report, which we do have --

9 **INMATE PORRAS:** Right.

10 **PRESIDING COMMISSIONER DAVIS:** -- and to look at
11 that, it's pretty clear that they were some -- they were
12 significant stab wounds.

13 **INMATE PORRAS:** Yes.

14 **PRESIDING COMMISSIONER DAVIS:** So which is different
15 from swinging a knife. Do you understand the
16 distinction?

17 **INMATE PORRAS:** Yes.

18 **PRESIDING COMMISSIONER DAVIS:** Okay.

19 **INMATE PORRAS:** It was -- I just swung (inaudible).

20 **PRESIDING COMMISSIONER DAVIS:** And what happened
21 after you -- after you made contact with him?

22 **INMATE PORRAS:** (Inaudible) everybody ran.

23 **PRESIDING COMMISSIONER DAVIS:** Okay. Did the victim
24 fall down?

25 **INMATE PORRAS:** No. When I left, he was still up.

26 **PRESIDING COMMISSIONER DAVIS:** He was standing up?

27 **INMATE PORRAS:** Yes.

1 **PRESIDING COMMISSIONER DAVIS:** Okay. Did he say
2 anything?

3 **INMATE PORRAS:** No.

4 **PRESIDING COMMISSIONER DAVIS:** Before -- Before you
5 stabbed him, I don't want to put words in your mouth,
6 before you -- tell me what you -- how you describe it,
7 the motion that you did, you call it swinging the knife
8 at him?

9 **INMATE PORRAS:** Yes.

10 **PRESIDING COMMISSIONER DAVIS:** Okay. Before you
11 swung the knife at him, did he have a weapon?

12 **INMATE PORRAS:** It started with a fight between
13 (inaudible) and Cosmo first. And Cosmo was chased off by
14 Mike Garcia. Mike Garcia and James ran up and chased
15 Cosmo. And (inaudible) continued to fight -- wrestling
16 match (inaudible) couple of times.

17 **PRESIDING COMMISSIONER DAVIS:** Okay. Did you ever
18 see a weapon?

19 **INMATE PORRAS:** No.

20 **PRESIDING COMMISSIONER DAVIS:** Why did you
21 produce -- Why did you introduce a weapon into this
22 otherwise fistfight?

23 **INMATE PORRAS:** Initially he was carrying a bag or
24 something, some sort of -- I don't know what happened to
25 the bag (inaudible). I don't know why I picked up the
26 knife. I don't -- stupid decision. I don't know why I
27 did it.

1 **PRESIDING COMMISSIONER DAVIS:** Okay. What kind of a
2 bag?

3 **INMATE PORRAS:** It looked like a small camera case.

4 **PRESIDING COMMISSIONER DAVIS:** So like a black --
5 what -- was it -- Do you remember what it was made out
6 of?

7 **INMATE PORRAS:** It looked like it was a leather or a
8 vinyl case (inaudible) with the straps.

9 **PRESIDING COMMISSIONER DAVIS:** And did you consider
10 that to be a weapon?

11 **INMATE PORRAS:** I don't -- I don't know what I
12 considered it (inaudible) at that time (inaudible).

13 **PRESIDING COMMISSIONER DAVIS:** Okay. Did he swing
14 it?

15 **INMATE PORRAS:** Not initially.

16 **PRESIDING COMMISSIONER DAVIS:** Did he ever swing it?

17 **INMATE PORRAS:** (Inaudible) over his shoulder and he
18 (inaudible) swing with both arms.

19 **PRESIDING COMMISSIONER DAVIS:** Okay. So he had the
20 bag over his shoulder and he was swinging with both arms.

21 **INMATE PORRAS:** Yes.

22 **PRESIDING COMMISSIONER DAVIS:** He didn't have the
23 bag in his hand?

24 **INMATE PORRAS:** No.

25 **PRESIDING COMMISSIONER DAVIS:** Okay. And you don't
26 remember why you felt the need to introduce a weapon into
27 this?

1 INMATE PORRAS: No.

2 PRESIDING COMMISSIONER DAVIS: Were you losing the
3 fight?

4 INMATE PORRAS: No.

5 PRESIDING COMMISSIONER DAVIS: Were you outnumbered?

6 INMATE PORRAS: Initially we were.

7 PRESIDING COMMISSIONER DAVIS: By how many?

8 INMATE PORRAS: Five.

9 PRESIDING COMMISSIONER DAVIS: Five to?

10 INMATE PORRAS: Three.

11 PRESIDING COMMISSIONER DAVIS: What happened? You
12 said initially. Did some of them leave?

13 INMATE PORRAS: Yeah. They jumped in the truck and
14 left (inaudible). I didn't see the truck but they were
15 (inaudible).

16 PRESIDING COMMISSIONER DAVIS: So did it boil down
17 to a fight between you and the victim?

18 INMATE PORRAS: It started out when -- When the
19 fight between me and the victim started, it was me and
20 then Cosmo.

21 PRESIDING COMMISSIONER DAVIS: Okay. But it boiled
22 down to a fight between the two of you?

23 INMATE PORRAS: Right.

24 PRESIDING COMMISSIONER DAVIS: So there weren't
25 other people involved that you were having to fend off as
26 well?

27 INMATE PORRAS: No. Mike chased Cosmo down and I

1 chased him off.

2 **PRESIDING COMMISSIONER DAVIS:** How well had you
3 known -- Did you know the victim at all before this?

4 **INMATE PORRAS:** I knew him a little bit before.
5 That night I didn't recognize him (inaudible) he did get
6 bigger and (inaudible).

7 **PRESIDING COMMISSIONER DAVIS:** Okay. How long had
8 it been since you'd seen him?

9 **INMATE PORRAS:** Almost two years.

10 **PRESIDING COMMISSIONER DAVIS:** Had there been any --
11 any conflicts or anything between the two of you?

12 **INMATE PORRAS:** (Inaudible).

13 **PRESIDING COMMISSIONER DAVIS:** So nothing before
14 this evening really?

15 **INMATE PORRAS:** Right.

16 **PRESIDING COMMISSIONER DAVIS:** And what really did
17 this start over?

18 **INMATE PORRAS:** Actually it started over a fight we
19 had a long time before but initially boiled down to a
20 recent fight between Mike and Moose's younger brother
21 Bruce. And it started (inaudible) bottle throwing at
22 each other's house. We don't live that far from each
23 other. It's the street and a little apartment complex
24 and the house -- the house -- the yards aren't that big.
25 You can throw a good 40 yard pass across the yards and
26 you can almost hit everybody.

27 **PRESIDING COMMISSIONER DAVIS:** Okay. Do you know

1 what the fight started over?

2 **INMATE PORRAS:** That night it was an argument
3 between my little -- younger brother and Moose. Moose, I
4 don't know what they -- it started over but me and Mike
5 had tried to stop the argument. Moose left down the
6 street and they started -- my little brother and Moose
7 started arguing. They left. Later on somebody came by
8 on 10-speeds yelling towards us. They left and then some
9 more people came.

10 **PRESIDING COMMISSIONER DAVIS:** Was this an unusual
11 occurrence?

12 **INMATE PORRAS:** Yes.

13 **PRESIDING COMMISSIONER DAVIS:** So fighting between
14 the neighbors and people like that was not something
15 normal?

16 **INMATE PORRAS:** No.

17 **PRESIDING COMMISSIONER DAVIS:** This was out of the
18 normal. Okay. Where did the knife come from originally?

19 **INMATE PORRAS:** I'd seen it a couple of days
20 earlier. We had like ivy that grew up into the street.
21 There's no sidewalk (inaudible) dirt pavement or asphalt.
22 The blade was hanging between the mailbox and the ivy.
23 I'd seen it there. I don't know why I remember that now.

24 **PRESIDING COMMISSIONER DAVIS:** Okay. All right. In
25 terms of your prior arrest record, you were arrested as a
26 juvenile at 16 years of age when you were first booked
27 from the San Joaquin Sheriff's Office for being

1 out-of-control. That was in -- and then -- It was in
2 1985. And then in March of '86 you were booked for
3 second degree -- second degree burglary and adjudged a
4 ward of the court, 60 days at juvenile hall. On
5 April 10, 1986 you were transferred to the Alameda County
6 for trespassing. November 1986 you were cited by the
7 California Highway Patrol for being under the influence
8 and again in January of '87 booked into the Stockton
9 Police Department for second degree burglary. It's all
10 from the probation officer's report. In terms of adult
11 arrests, you had four misdemeanor arrests for driving
12 under the influence of alcohol.

13 **INMATE PORRAS:** I think not all of them were. I
14 think one of them was for driving without a license.

15 **PRESIDING COMMISSIONER DAVIS:** Okay. So was alcohol
16 a significant problem for you at the time?

17 **INMATE PORRAS:** I wouldn't say a problem but that's
18 (inaudible) drinking (inaudible).

19 **PRESIDING COMMISSIONER DAVIS:** Yeah. Well sounds
20 like you were drinking a lot.

21 **INMATE PORRAS:** Yeah.

22 **PRESIDING COMMISSIONER DAVIS:** Would you say that
23 was out of the norm for the amount -- that amount of
24 alcohol that you were drinking?

25 **INMATE PORRAS:** Yes.

26 **PRESIDING COMMISSIONER DAVIS:** Okay. Why were you
27 drinking so much?

1 **INMATE PORRAS:** No real reason. I didn't do any
2 other drugs or anything. That was what I did.

3 **PRESIDING COMMISSIONER DAVIS:** Okay. Did you feel
4 like you had to drink or needed to drink?

5 **INMATE PORRAS:** Well I wouldn't say needed to but
6 you know growing up you do something to try to fit in or
7 whatever.

8 **PRESIDING COMMISSIONER DAVIS:** So that is what you
9 did to try and fit in?

10 **INMATE PORRAS:** Not really fit in but you know
11 stupid things that kids do. I guess I wouldn't try to
12 explain like that but yeah.

13 **PRESIDING COMMISSIONER DAVIS:** Okay. The arrest
14 that you -- and so forth, do you feels that alcohol was a
15 contributing factor to those things?

16 **INMATE PORRAS:** Yeah.

17 **PRESIDING COMMISSIONER DAVIS:** Why?

18 **INMATE PORRAS:** Because the ones for the driving I
19 should never have been in the car when I was drinking.
20 And the first one I thought that, you know, I could drink
21 a little bit and make it home before the alcohol caught
22 up but the cops got me for the alcohol (inaudible).

23 **PRESIDING COMMISSIONER DAVIS:** What about the
24 burglaries?

25 **INMATE PORRAS:** The burglaries, those weren't
26 alcohol related.

27 **PRESIDING COMMISSIONER DAVIS:** No?

1 **INMATE PORRAS:** No.

2 **PRESIDING COMMISSIONER DAVIS:** Was there anything --
3 What were they related to?

4 **INMATE PORRAS:** The first one, we were in Stockton
5 just throwing rocks at stumps. There's like a canal and
6 there's a distributing -- distributing market or whatever
7 it is. The stump's in the circle. We threw rocks at the
8 stump and one of the rocks bounced up and broke the
9 window. And like dumb (inaudible) we thought we could
10 get in there and go see what was in there just for kicks.
11 And we didn't know we set off a silent alarm.

12 **PRESIDING COMMISSIONER DAVIS:** Okay. How old were
13 you at the time?

14 **INMATE PORRAS:** Fifteen.

15 **PRESIDING COMMISSIONER DAVIS:** And then what was the
16 second one?

17 **INMATE PORRAS:** We were on the roof at -- junior
18 high school.

19 **PRESIDING COMMISSIONER DAVIS:** And did you go into
20 any of the buildings?

21 **INMATE PORRAS:** No, my partner went in through the
22 skylight of the gym and came up the other side.

23 **PRESIDING COMMISSIONER DAVIS:** Didn't steal anything
24 or anything?

25 **INMATE PORRAS:** No.

26 **PRESIDING COMMISSIONER DAVIS:** Okay.

27 **INMATE PORRAS:** Got arrested for that.

1 **PRESIDING COMMISSIONER DAVIS:** So you think the
2 alcohol impaired your judgment?

3 **INMATE PORRAS:** Yes.

4 **PRESIDING COMMISSIONER DAVIS:** Do you think the
5 instant offense would have never happened were it not for
6 the alcohol?

7 **INMATE PORRAS:** Yes.

8 **PRESIDING COMMISSIONER DAVIS:** I don't understand.
9 Yes -- Yes, it would have happened or --

10 **INMATE PORRAS:** Well, no, it wouldn't have happened.

11 **PRESIDING COMMISSIONER DAVIS:** It wouldn't have
12 happened except for the alcohol?

13 **INMATE PORRAS:** Yes.

14 **PRESIDING COMMISSIONER DAVIS:** Okay. In terms of
15 your social history, you were born at the Sioux
16 Reservation in Montana?

17 **INMATE PORRAS:** Yes.

18 **PRESIDING COMMISSIONER DAVIS:** And then it says you
19 were raised in Newark. Are we talking Newark, New
20 Jersey?

21 **INMATE PORRAS:** No, California.

22 **PRESIDING COMMISSIONER DAVIS:** Newark, California.
23 Okay. And then you went to Stockton?

24 **INMATE PORRAS:** Yes.

25 **PRESIDING COMMISSIONER DAVIS:** And you're the middle
26 of seven children.

27 **INMATE PORRAS:** Yes.

1 **PRESIDING COMMISSIONER DAVIS:** You have close ties
2 with your parents. Both parents still alive?

3 **INMATE PORRAS:** Yes.

4 **PRESIDING COMMISSIONER DAVIS:** Okay. And still
5 close ties with them?

6 **INMATE PORRAS:** (Inaudible).

7 **PRESIDING COMMISSIONER DAVIS:** Keep in regular
8 contact? You attended high -- You attended school
9 through the tenth grade. No military experience. We
10 already talked about the burglaries and the arrest
11 record. You worked on and off for Curtis Riggins,
12 R-I-G-G-I-N-S, to lay carpet and also you helped with
13 some auto mechanics work with him.

14 **INMATE PORRAS:** Right.

15 **PRESIDING COMMISSIONER DAVIS:** And obviously you
16 maintained a close relationship with him because I think
17 that's -- as I read that was part of your parole plans as
18 well. Is that someone -- Just a close family friend or
19 --

20 **INMATE PORRAS:** Close friend.

21 **PRESIDING COMMISSIONER DAVIS:** Yeah. You started
22 consuming alcohol as we said earlier about the age of 15.
23 Tried marijuana at that time at the age of 13. Also used
24 black beauties for about two weeks in '87 and consumed
25 crank maybe five times in 1987. That sound all about
26 right?

27 **INMATE PORRAS:** The crank and the black beauties

1 came from the same conversation I had with the probation
2 officer.

3 **PRESIDING COMMISSIONER DAVIS:** Okay.

4 **INMATE PORRAS:** Yeah, she asked me what the black
5 beauties were and I didn't really know how to explain
6 them (inaudible) they were diet pills, they said they had
7 an affect of an upper like crank (inaudible) black
8 beauties and the crank, that's (inaudible).

9 **PRESIDING COMMISSIONER DAVIS:** That was the same
10 thing?

11 **INMATE PORRAS:** Yes.

12 **PRESIDING COMMISSIONER DAVIS:** Okay. Because crank
13 often refers to a homemade process that -- or the earlier
14 types of methamphetamine but -- so that was all -- that
15 was -- those aren't two different experimental sorts of
16 things?

17 **INMATE PORRAS:** (Inaudible) --

18 **PRESIDING COMMISSIONER DAVIS:** Those are all one?

19 **INMATE PORRAS:** -- black beauties.

20 **PRESIDING COMMISSIONER DAVIS:** Okay. And was
21 there -- was there a reason why you were trying the black
22 beauties at the time?

23 **INMATE PORRAS:** Somebody gave me a big bag of them
24 and I had them. I didn't know what they were so I tried
25 them. I didn't like the feeling that they gave me.

26 **PRESIDING COMMISSIONER DAVIS:** Okay. Same -- Same
27 with the marijuana?

1 INMATE PORRAS: Yeah, marijuana --

2 PRESIDING COMMISSIONER DAVIS: So alcohol was really
3 the drug of choice?

4 INMATE PORRAS: Correct.

5 PRESIDING COMMISSIONER DAVIS: Okay. All right.
6 Now, do you have any brothers and sisters?

7 INMATE PORRAS: Yeah.

8 PRESIDING COMMISSIONER DAVIS: And do you keep in
9 contact with them?

10 INMATE PORRAS: Yeah.

11 PRESIDING COMMISSIONER DAVIS: And through cards,
12 letters, telephone calls?

13 INMATE PORRAS: Telephone.

14 PRESIDING COMMISSIONER DAVIS: Anybody else have any
15 problem with law enforcement?

16 INMATE PORRAS: Yeah, my family's had a few run-ins
17 (inaudible).

18 PRESIDING COMMISSIONER DAVIS: Okay. Is there
19 anything that we haven't talked about in terms of your
20 background, your growing up, your educational experience,
21 the incident offense itself, anything that you think is
22 important for this Panel to understand that we haven't
23 already discussed?

24 INMATE PORRAS: No.

25 PRESIDING COMMISSIONER DAVIS: All right. If
26 something comes up, would you please just, you know, let
27 us know that, wait a minute, I forgot this and this, you

1 need to know this. Okay. We want to make sure we give
2 -- give you every opportunity to tell us everything that
3 you -- that you remember of this process.

4 **INMATE PORRAS:** Yeah.

5 **PRESIDING COMMISSIONER DAVIS:** Okay. Commissioner,
6 did you have any questions?

7 **DEPUTY COMMISSIONER BLONIEN:** No.

8 **PRESIDING COMMISSIONER DAVIS:** All right. Then I'll
9 ask you to turn your attention please -- please to
10 Commissioner Blonien.

11 **DEPUTY COMMISSIONER BLONIEN:** Mr. Porras, it's my
12 job to find out what you've been doing in the institution
13 since your last hearing. In order to do this, I've read
14 your C-File. I read your counselor's report and the
15 Board reports and I read the psych report. I note that
16 you did an Olson Review of your C-File on February 14,
17 '05. So you've read everything that I'm going to talk
18 about. Your last appearance before the Board you
19 received a one year denial. And that was on 7-12-05.
20 The Panel recommended that you stay disciplinary-free,
21 get self-help, earn positive chronos. They also
22 requested a copy of the coroner's report and the police
23 report which -- which we do have. Your psych report is
24 by Dr. Hewchuk, H-E-W-C-H-U-K, and that's dated June 7,
25 '05. And the counselor's report, 2-23-05, by Counselor
26 Quintero, Q-U-I-N-T-E-R-O, and I've updated it by going
27 through the C-File. And when we start talking about your

1 disciplinary record, I would say there's extenuating
2 circumstances that we should talk about, that on 12-19-05
3 you 602'd -- had an appeal form noting that you'd been on
4 C status since October 1998. And explain C status.

5 **INMATE PORRAS:** (Inaudible) I wasn't allowed to
6 attend programs or anything because of my hair.

7 **DEPUTY COMMISSIONER BLONIEN:** In 1998 the Department
8 implemented regulations, grooming regulations.

9 **INMATE PORRAS:** Right.

10 **DEPUTY COMMISSIONER BLONIEN:** And we apply them to
11 all inmates.

12 **INMATE PORRAS:** Correct.

13 **DEPUTY COMMISSIONER BLONIEN:** And a group of
14 inmates, specifically American Indians, appealed those
15 grooming standards. And as that went through the court
16 process it took a long time. But the ending result was
17 the ruling in favor of the American Indians and their
18 appeal. And so on 12-19-05 you appealed your C status,
19 which you'd been on for seven years, stating that based
20 on a recent ruling in the interest of justice I should be
21 removed from my current C status and placed in the
22 appropriate privileged groups as there is absolutely no
23 reason as to why I should remain on C status. And this
24 thing was adjudicated and your appeal was denied on
25 1-24-06. And part of the denial said that there are
26 court decisions which may impact the Department of
27 Corrections. And if after legal evaluation, the change

1 in department rules and regulations is required, an
2 administrative bulletin will be issued. Several changes
3 are anticipated as a result of the recent court decision.
4 However, at this time no notice of change pertaining to
5 your issue has been received by the Correctional Training
6 Facility. Therefore, your appeal is denied at the second
7 level. And that was 1-24-06. And this is the last legal
8 paper that's in your file. I personally know that there
9 have been administrative bulletins and that CDC 115's
10 relating to grooming standards that occurred as a result
11 of this lawsuit are supposed to be removed from your
12 C-File. Yours have not been removed. I do note that you
13 have gone to classification and that on 2-27-06 you came
14 off C status due to the emergency regulations regarding
15 inmate grooming standards and access to religious
16 programs and that you're retroactive to 9-22-2000. So
17 with all that talk, when we talk about what you've been
18 doing in the institution since your last hearing, I just
19 wanted to set that framework that because of your C
20 status you are not allowed to work, go to vocation and
21 program only in a limited manner because of your status.
22 But then we also know that you have access. And the
23 Board does rely on your ability to do self-help in your
24 cell through reading and book reports or -- as you've
25 gone through. And I want to talk about that. But before
26 I talk about that, I do want to read into the record that
27 before you were put on C status that you were programming

1 and you were very active. You were involved in
2 Vocational Radiology Technology and you were a
3 Radiologist.

4 **INMATE PORRAS:** Yes, well not -- x-ray tech.

5 **DEPUTY COMMISSIONER BLONIEN:** And had you completed
6 the program?

7 **INMATE PORRAS:** I didn't get to finish all the
8 (inaudible).

9 **DEPUTY COMMISSIONER BLONIEN:** And I don't think they
10 have the program any more do they?

11 **INMATE PORRAS:** No.

12 **DEPUTY COMMISSIONER BLONIEN:** They don't." That you
13 did participate in AA actively, that you went to the --
14 and completed the courses on HIV, AIDS. You attended NA
15 meetings. You completed the course on Hepatitis,
16 Sexually Transmitted Diseases, Tuberculosis and you were
17 active in your Spiritual Circle and continue to be active
18 in your Spiritual Circle. So you've attended -- You
19 attended AA from '95 to 2000. And did you work through
20 the steps in that five years?

21 **INMATE PORRAS:** (Inaudible).

22 **DEPUTY COMMISSIONER BLONIEN:** A little bit in five
23 years?

24 **INMATE PORRAS:** Yeah.

25 **DEPUTY COMMISSIONER BLONIEN:** How little?

26 **INMATE PORRAS:** It's a lifelong commitment. You
27 can't really say that you did a whole lot because this is

1 something that you got to carry on forever. It's never
2 done.

3 **DEPUTY COMMISSIONER BLONIEN:** And as you've worked
4 through the steps how far did you go?

5 **INMATE PORRAS:** I've learned all the steps
6 (inaudible) and did some other things.

7 **DEPUTY COMMISSIONER BLONIEN:** And did you do a moral
8 inventory?

9 **INMATE PORRAS:** Yes, I did.

10 **DEPUTY COMMISSIONER BLONIEN:** Takes a long time.

11 **INMATE PORRAS:** Yes, it does.

12 **DEPUTY COMMISSIONER BLONIEN:** And did you seek to
13 make amends with those you've harmed?

14 **INMATE PORRAS:** Yes, (inaudible) a long time ago.

15 **DEPUTY COMMISSIONER BLONIEN:** And what did you do in
16 that arena?

17 **INMATE PORRAS:** I tried to talk to the family but
18 they said to leave it alone and give it some time first,
19 so I did.

20 **DEPUTY COMMISSIONER BLONIEN:** And there is a way to
21 talk to the family but it's only appropriate to do it
22 through the District Attorney's office and the Victim
23 Witness Program. And if you write a letter, you send it
24 to the DA.

25 **INMATE PORRAS:** (Inaudible).

26 **DEPUTY COMMISSIONER BLONIEN:** And they contact the
27 victim if they can, the victim's family. And then the

1 victim's family chooses whether they wish to read the
2 letter or not. And you may never know, but it's still a
3 good idea to go through that, that process. So since
4 1998 you haven't been able to program. Two thousand was
5 the last AA. What have you been doing to make sure you
6 have the support system that translates into the
7 community so that you'd never drink again? Because you
8 can never drink again.

9 **INMATE PORRAS:** I know. The first step in the AA
10 program, that's pretty much all you really need to learn.
11 You need to learn that you become powerless over --
12 alcohol has more power than anything, that's what you got
13 to remember, keep in mind. Everything else, you can't
14 rely on nobody else to tell you what to do anymore, say
15 you can't do this. AA's got this thing where it gives
16 you an out where you can say, you know, my sponsor failed
17 me so I had to go get a drink or some other -- you can't
18 rely on that no more. It's got to be that guy's
19 responsible, me, not anybody else, I can never ever say
20 that my higher power let me down or my sponsor let me
21 down. I got to do that and that's what I carry, that
22 first step. That first step is always the first step in
23 every program and that's the only one that a person
24 really should carry. Because when it gets to the rest
25 where you're talking about somebody else needs to do
26 things for you, you're always going to fail.

27 **DEPUTY COMMISSIONER BLONIEN:** And as you went

36

1 forward with your spiritual -- spiritualization here in
2 the institution, is there help through that that has
3 helped you with your alcohol?

4 INMATE PORRAS: Yeah.

5 DEPUTY COMMISSIONER BLONIEN: Good. Tell me about
6 that.

7 INMATE PORRAS: Well we've had -- Well right now we
8 transitioned -- doing some other things. I brought one
9 of my letters (inaudible) also (inaudible) ever I need
10 (inaudible) always have some place to go, some place to
11 fall on that, you know, there's also some --

12 DEPUTY COMMISSIONER BLONIEN: That's in the
13 community. I hear --

14 INMATE PORRAS: Yeah.

15 DEPUTY COMMISSIONER BLONIEN: -- there's alcohol in
16 the institution. How do you avoid it?

17 INMATE PORRAS: Just avoid it. There's a lot of
18 things that you could just step around and not even -- I
19 mean there's a lot you could say just like a liquor
20 store. I don't need it. I never touch it.

21 DEPUTY COMMISSIONER BLONIEN: And you just never
22 touch it because you're just strong?

23 INMATE PORRAS: Yeah. I won't do it no more.

24 DEPUTY COMMISSIONER BLONIEN: And why won't you do
25 it anymore?

26 INMATE PORRAS: I never, ever want to fall into the
27 same thing I'm doing now.

1 DEPUTY COMMISSIONER BLONIEN: So if you ever get
2 out, you might get a car, you might be working on a car.
3 Stockton is a very hot place.

4 INMATE PORRAS: They sell Kool-Aid.

5 DEPUTY COMMISSIONER BLONIEN: So if you were in a
6 stressful situation where it would be easier to cope with
7 a beer, what would you do?

8 INMATE PORRAS: Just cope with the stress.

9 DEPUTY COMMISSIONER BLONIEN: Who would you call out
10 to?

11 INMATE PORRAS: Myself.

12 DEPUTY COMMISSIONER BLONIEN: What other area have
13 you studied in terms -- in your cell? What are you
14 reading?

15 INMATE PORRAS: I've got a few things like this
16 White Bison program. We got another wellness -- it's a
17 Circle (inaudible) and that's what I (inaudible).

18 DEPUTY COMMISSIONER BLONIEN: Okay. White Bison
19 program's very similar to AA.

20 INMATE PORRAS: (Inaudible).

21 DEPUTY COMMISSIONER BLONIEN: (Inaudible) based on
22 Native American culture.

23 INMATE PORRAS: Yes.

24 DEPUTY COMMISSIONER BLONIEN: And fits more in with
25 your spirituality.

26 INMATE PORRAS: Yeah.

27 DEPUTY COMMISSIONER BLONIEN: And it -- are tools

1 for you to use so that you don't relapse into alcohol.

2 **INMATE PORRAS:** Yeah.

3 **DEPUTY COMMISSIONER BLONIEN:** So this is your
4 hearing. You tell me how -- what else you've been
5 learning. It sounds like you have a lot of anger
6 (inaudible). People just don't start flailing with a
7 knife if they're not angry.

8 **INMATE PORRAS:** Yeah, I know.

9 **DEPUTY COMMISSIONER BLONIEN:** Have you done any
10 Anger Management?

11 **INMATE PORRAS:** I tried to get their Anger
12 Management classes. They're starting to rebuild them
13 now. I enrolled in one at -- Well it's been working
14 since March but we've only been there five times. Tried
15 another one, they said I have to be Triple CMC to attend.

16 **DEPUTY COMMISSIONER BLONIEN:** Cage Your Rage. You
17 signed up for Cage --

18 **INMATE PORRAS:** Yeah.

19 **DEPUTY COMMISSIONER BLONIEN:** -- Your Rage but you
20 do have to be Triple CMS. What about reading about Anger
21 Management, have you done anything like that?

22 **INMATE PORRAS:** Yeah, I've read over -- my bunkie
23 has a whole bunch of books too that he goes through and
24 picks up and I read through them too.

25 **DEPUTY COMMISSIONER BLONIEN:** Do you have a list?

26 **INMATE PORRAS:** No, I never made a list.

27 **DEPUTY COMMISSIONER BLONIEN:** Can you tell me about

1 one?

2 **INMATE PORRAS:** (Inaudible) I can't remember the
3 title but it's the same thing I just explained. It has
4 to start here. I've got to take care of me first. I
5 can't never, ever go and blame things on anybody else,
6 say it was them that made me do this or somebody else got
7 to be responsible for me. It's always got to
8 (inaudible).

9 **DEPUTY COMMISSIONER BLONIEN:** Does it start here or
10 does it start here?

11 **INMATE PORRAS:** Both.

12 **DEPUTY COMMISSIONER BLONIEN:** Both. Anything else
13 you've been doing in the institution that you want to
14 talk about?

15 **INMATE PORRAS:** Not right now.

16 **DEPUTY COMMISSIONER BLONIEN:** You do have parole
17 plans.

18 **INMATE PORRAS:** Right.

19 **DEPUTY COMMISSIONER BLONIEN:** And you do have a
20 supportive family. And you have a mom.

21 **INMATE PORRAS:** Yes.

22 **DEPUTY COMMISSIONER BLONIEN:** Who would like you
23 home. And she's offering you a place to live.

24 **INMATE PORRAS:** Right.

25 **DEPUTY COMMISSIONER BLONIEN:** She lives in Stockton.

26 **INMATE PORRAS:** Yes.

27 **DEPUTY COMMISSIONER BLONIEN:** And you can definitely

1 go to her and she says that if you don't live with her
2 you can live with your other six siblings who also live
3 in Stockton. So if you -- if you do get a parole date,
4 where would you want to live?

5 **INMATE PORRAS:** First I'd stay with mom.

6 **DEPUTY COMMISSIONER BLONIEN:** And she has room for
7 you?

8 **INMATE PORRAS:** Yes.

9 **DEPUTY COMMISSIONER BLONIEN:** And then you have a
10 letter from your sister Nina.

11 **INMATE PORRAS:** Neva.

12 **DEPUTY COMMISSIONER BLONIEN:** Neva. It's a
13 handwritten letter signed by Neva Martin dated July 3rd.
14 And she thinks you deserve to be paroled. You have a
15 place to live in Stockton with either your parents -- Is
16 your father alive also?

17 **INMATE PORRAS:** Yes.

18 **DEPUTY COMMISSIONER BLONIEN:** Or with her. And that
19 you've always been a very friendly person, that you did
20 make a mistake and that she believes that you really
21 learned from the terrible experience and that she is a
22 union trades person and she would help you find
23 employment. What does he do?

24 **INMATE PORRAS:** Right now she's a contractor. She's
25 building -- She was working on the Bay Bridge. That
26 contract ended. Now she's working on a sewer treatment
27 facility in Stockton

1 **DEPUTY COMMISSIONER BLONIEN:** So she makes good
2 money. She's a highly skilled person. Then you have --
3 How did you meet Curtis to begin with?

4 **INMATE PORRAS:** One of the first friends I met in
5 Stockton (inaudible) --

6 **DEPUTY COMMISSIONER BLONIEN:** He has --

7 **INMATE PORRAS:** -- same age.

8 **DEPUTY COMMISSIONER BLONIEN:** Same age. He has two
9 letters.

10 **INMATE PORRAS:** (Inaudible) old with a new updated
11 (inaudible).

12 **DEPUTY COMMISSIONER BLONIEN:** Well one is on
13 letterhead, Curtis Tile & Marble Gallery which is in
14 Stockton. And he is very supportive of you and your
15 parole. He'll personally make sure that you have a job
16 in his business. He would -- the training.

17 **INMATE PORRAS:** Right.

18 **DEPUTY COMMISSIONER BLONIEN:** You could even live
19 with him if you wanted to, that his whole family knows
20 you and -- supportive of you and that he thinks that you
21 will positively parole and be a positive person in
22 society. He said that you can positively affect to break
23 awake (verbatim) start anew, beginning --

24 **INMATE PORRAS:** (Inaudible) --

25 **DEPUTY COMMISSIONER BLONIEN:** -- beginning a new
26 future. I mean a friend that would take the time to
27 write the letter who lets his whole family know about

1 you, you know the family, and then there's this program
2 that he wrote to and it is the Native Direction
3 Incorporated, The Three Rivers Indian Lodge which is in
4 Manteca which isn't far from Stockton. And you're
5 welcome to come and they have a ceremony sweat lodge and
6 you can come to meetings there and they have AA meetings,
7 they have drug court, they have Talking Circle, mental
8 health referrals, cultural, traditional activities, anger
9 management, White Bison, Red Road To Recovery, and it was
10 founded in 1974. It administers and extends alcohol
11 (inaudible) treatment services for the individual
12 (inaudible) a point of new beginning. And they would be
13 there for you if you needed them. So you'd live with
14 your mom, you'd work for Curtis. You have this to rely
15 on if you need any help in terms of alcohol abuse. Do
16 you see any problems reintegrating in terms of the
17 world's gone pretty fast while you haven't been there.

18 **INMATE PORRAS:** No.

19 **DEPUTY COMMISSIONER BLONIEN:** You know how to work.

20 **INMATE PORRAS:** (Inaudible).

21 **DEPUTY COMMISSIONER BLONIEN:** Anything else about
22 parole plans? You have a family that supports you. Does
23 your family have parties and drink?

24 **INMATE PORRAS:** No.

25 **DEPUTY COMMISSIONER BLONIEN:** How do you know?

26 **INMATE PORRAS:** They don't (inaudible).

27 **DEPUTY COMMISSIONER BLONIEN:** They don't?

43

1 INMATE PORRAS: (Inaudible) they pretty much --

2 DEPUTY COMMISSIONER BLONIEN: There's been some
3 problems other than you --

4 INMATE PORRAS: Yes.

5 DEPUTY COMMISSIONER BLONIEN: -- with alcohol in the
6 family.

7 INMATE PORRAS: Yes, (inaudible) they're all right.

8 DEPUTY COMMISSIONER BLONIEN: And we also sent out
9 3042 Notices to law enforcement and interested parties.
10 We got a letter from the attorney who defended you at
11 trial and it's dated July 27, '06. And his name is Keith
12 Arthur. And he says that because you were so young at
13 the time of the crime he doesn't remember much about you
14 but he remembers the facts of the case vividly, that the
15 boys were drinking themselves stupid on (inaudible) wine
16 coolers. Neville's younger brother disappeared and they
17 thought they heard him crying for help. Everybody ran
18 around like chickens with their heads cut off looking for
19 him. The victim just happened to be coming the other way
20 amusing himself by smashing the windows out of parked
21 cars. Words were exchanged, the homicide occurred.
22 Everybody in the courtroom was surprised at the verdict.
23 It should have been voluntary manslaughter. I'm sure you
24 hear this all the time, I wish I could add more. Please
25 extend -- You got a copy of this letter.

26 INMATE PORRAS: No.

27 DEPUTY COMMISSIONER BLONIEN: Please extend my

1 thoughts and (inaudible) to Neville in the hopes that
2 he's taking advantage of the programs available to get
3 his life back on track. He's still a young man. I hope
4 he's not letting this one evening of insane bad judgment
5 define his life. We also have a representative from the
6 San Joaquin District Attorney's office and at the
7 appropriate time she's going to be able to ask questions
8 and make a comment. With that I'll return to the Chair.

9 **PRESIDING COMMISSIONER DAVIS:** All right. Thank
10 you. Tell me a little bit more about the differences or
11 similarities between the White Bison program and AA.

12 **INMATE PORRAS:** Well AA is more geared towards
13 Christianity and Jesus and the White Bison's more
14 (inaudible) our culture, our culture and beliefs.

15 **PRESIDING COMMISSIONER DAVIS:** Are there sponsors in
16 the White Bison program?

17 **INMATE PORRAS:** Yes, well not what (inaudible) say
18 for AA but there are sponsors.

19 **PRESIDING COMMISSIONER DAVIS:** So is it -- What I'm
20 trying to get to is it similarly structured where you
21 have someone that you go to if you feel like you want to
22 take a drink and you talk to them and they help walk you
23 through the process?

24 **INMATE PORRAS:** (Inaudible).

25 **PRESIDING COMMISSIONER DAVIS:** Okay. And that's
26 what I think -- trying to get to before and we asked you
27 who you would go to and you said yourself. Is it kind of

1 your view then that you don't need a sponsor or --

2 **INMATE PORRAS:** No, it's good -- it's good to have a
3 sponsor but it's not good to rely on a sponsor.

4 **PRESIDING COMMISSIONER DAVIS:** Okay. I think the
5 issue generally is that you have someone that you can go
6 to ask questions of and maybe get some support. Do you
7 see a need for that?

8 **INMATE PORRAS:** A little bit.

9 **PRESIDING COMMISSIONER DAVIS:** All right. Have you
10 looked into -- is the x-ray --

11 **DEPUTY COMMISSIONER BLONIEN:** (Inaudible).

12 **PRESIDING COMMISSIONER DAVIS:** That means the tape
13 has shut off. We have to stop for a moment.

14 [Thereupon, the tape was turned over.]

15 **DEPUTY COMMISSIONER BLONIEN:** Okay. We're back on
16 tape, side two.

17 **PRESIDING COMMISSIONER DAVIS:** Do you know if the
18 x-ray technician, was that the program you were in,
19 x-ray technician?

20 **INMATE PORRAS:** Yeah.

21 **PRESIDING COMMISSIONER DAVIS:** Do you know if that
22 exists anywhere else in the institution?

23 **INMATE PORRAS:** Not anymore.

24 **PRESIDING COMMISSIONER DAVIS:** Not anymore.
25 Nowhere -- no other -- No other institutions --

26 **INMATE PORRAS:** (Inaudible) Solano and CMC had it
27 and they did away with it.

1 **PRESIDING COMMISSIONER DAVIS:** Okay. So as far as
2 you know it doesn't exist anywhere?

3 **INMATE PORRAS:** Right.

4 **PRESIDING COMMISSIONER DAVIS:** Okay. All right.
5 Have we missed anything? Is there anything that you want
6 to add to what we've already talked about?

7 **INMATE PORRAS:** No.

8 **PRESIDING COMMISSIONER DAVIS:** All right. Does the
9 District Attorney have questions?

10 **DEPUTY DISTRICT ATTORNEY ISRAELS:** I just --
11 Factually speaking, I was going to ask you what you said
12 about what happened that day. It's my understanding that
13 you said you picked up a broken knife that was in the
14 dirt and then you swung it at the victim; you couldn't --
15 you don't know if you stabbed him. Right? Is that what
16 you -- What happened after that?

17 **INMATE PORRAS:** Everybody stopped fighting and
18 everybody ran away.

19 **PRESIDING COMMISSIONER DAVIS:** Be sure and direct
20 your questions up here.

21 **DEPUTY DISTRICT ATTORNEY ISRAELS:** I'm sorry.

22 **PRESIDING COMMISSIONER DAVIS:** Thank you.

23 **DEPUTY DISTRICT ATTORNEY ISRAELS:** I'm sorry.

24 **PRESIDING COMMISSIONER DAVIS:** Quite all right.

25 **DEPUTY DISTRICT ATTORNEY ISRAELS:** And then after --
26 So everybody ran off and what happened next?

27 **INMATE PORRAS:** We all went back home.

1 DEPUTY DISTRICT ATTORNEY ISRAELS: You didn't chase
2 after anybody?

3 INMATE PORRAS: No.

4 DEPUTY DISTRICT ATTORNEY ISRAELS: And then how many
5 times did he stab -- I want to know how many times he
6 stabbed him.

7 PRESIDING COMMISSIONER DAVIS: Do you recall how
8 many times?

9 INMATE PORRAS: I swung the knife twice. They
10 didn't feel like they made contact but I know it was made
11 in that general area so I don't know.

12 DEPUTY DISTRICT ATTORNEY ISRAELS: And then how was
13 the victim lying when he stabbed at him? Was he on his
14 back, was he on his stomach? How was he lying? Was he
15 on his side, what?

16 INMATE PORRAS: No, he was on his (inaudible).

17 PRESIDING COMMISSIONER DAVIS: He was standing
18 facing you?

19 INMATE PORRAS: Yeah.

20 PRESIDING COMMISSIONER DAVIS: Okay.

21 DEPUTY DISTRICT ATTORNEY ISRAELS: The whole time?

22 INMATE PORRAS: Yes.

23 DEPUTY DISTRICT ATTORNEY ISRAELS: Did he ever turn
24 around?

25 INMATE PORRAS: No.

26 PRESIDING COMMISSIONER DAVIS: As I recall, what you
27 -- what you told me was that you -- when you left, he was

1 still standing?

2 INMATE PORRAS: Yeah.

3 PRESIDING COMMISSIONER DAVIS: Okay.

4 DEPUTY DISTRICT ATTORNEY ISRAELS: Nobody else had
5 any weapons. Is that correct?

6 INMATE PORRAS: I think my brother said he had a
7 knife and a stick also.

8 PRESIDING COMMISSIONER DAVIS: Your brother had a
9 knife and a stick?

10 INMATE PORRAS: Yeah.

11 PRESIDING COMMISSIONER DAVIS: Was he present with
12 you when you were fighting with the victim?

13 INMATE PORRAS: No. He (inaudible) initially --
14 Well after the fight was over, he ran up and swung the
15 stick at Shawn and ran away.

16 DEPUTY DISTRICT ATTORNEY ISRAELS: And the blade
17 that he found on the ground, I wanted to know is that
18 something he knew was like in that particular place on
19 the ground or did he just happen to see it when he was
20 there?

21 INMATE PORRAS: I'd seen it I think two days before
22 (inaudible).

23 DEPUTY DISTRICT ATTORNEY ISRAELS: Where did it come
24 from?

25 INMATE PORRAS: I don't know. It was just laying
26 there.

27 DEPUTY DISTRICT ATTORNEY ISRAELS: Was it on your --

1 was it on his property or -- Was it on your property or
2 --

3 INMATE PORRAS: (Inaudible).

4 DEPUTY DISTRICT ATTORNEY ISRAELS: -- or somebody
5 else? What?

6 PRESIDING COMMISSIONER DAVIS: On the neighbor's
7 property?

8 INMATE PORRAS: Yeah.

9 PRESIDING COMMISSIONER DAVIS: All right.

10 DEPUTY DISTRICT ATTORNEY ISRAELS: And it was just
11 laying there in plain view for two days?

12 INMATE PORRAS: Well pretty much. It was a broken
13 blade like the handle broke off and somebody just through
14 the blade away (inaudible).

15 DEPUTY DISTRICT ATTORNEY ISRAELS: And just the last
16 question, why did you choose to pick it up and take it to
17 this fight? Why did you think you'd need it?

18 INMATE PORRAS: I have no idea why. I just picked
19 it up. I never thought about why I did it. I just
20 picked it up.

21 DEPUTY DISTRICT ATTORNEY ISRAELS: That's all.

22 PRESIDING COMMISSIONER DAVIS: All right.

23 Mr. Sparks.

24 ATTORNEY SPARKS: Did you ever fight when you
25 weren't drinking?

26 INMATE PORRAS: No.

27 ATTORNEY SPARKS: So you only fought when you were

1 drinking?

2 INMATE PORRAS: No. I would say I've been in a
3 fight when I wasn't drinking. It wasn't something that
4 we initially went and did.

5 ATTORNEY SPARKS: I guess the question is, is were
6 you ever really violent when you weren't drinking?

7 INMATE PORRAS: No.

8 ATTORNEY SPARKS: So you were only violent when you
9 were drinking?

10 INMATE PORRAS: No, I was never violent.

11 ATTORNEY SPARKS: This incident was one of violence,
12 is that true?

13 INMATE PORRAS: Yeah.

14 ATTORNEY SPARKS: You had to be violent sometime.

15 INMATE PORRAS: Well that night it was.

16 ATTORNEY SPARKS: Okay. I was just reading along
17 somewhere that you'd been in fights before.

18 INMATE PORRAS: Yeah.

19 ATTORNEY SPARKS: When you were in fights, were you
20 drinking?

21 INMATE PORRAS: No, just outside of the school was a
22 fight with Moose, Moose Phillips.

23 ATTORNEY SPARKS: Okay. So how come you haven't had
24 any fights while you've been in prison?

25 INMATE PORRAS: No alcohol. I've learned to control
26 myself. I don't want to be in this situation again.

27 ATTORNEY SPARKS: Well there are plenty of people

1 that would provoke you like Moose Phillips around in
2 prison. How come you haven't had any fights? What do
3 you do to diffuse the situation?

4 **INMATE PORRAS:** I just -- just walk away from it.
5 Nothing that -- There's nothing like the incident that
6 happened with Moose in prison.

7 **ATTORNEY SPARKS:** Okay. Well what happens if
8 there's somebody like Moose in the community that you
9 have a -- some beef with out there? Are you going to
10 fight them?

11 **INMATE PORRAS:** No.

12 **ATTORNEY SPARKS:** What about drinking? You know a
13 lot of the Panel's questions today were designed about
14 whether you're going to abstain from drinking in the
15 community. And typically they're looking for what kind
16 of support system you have in place because a lot of guys
17 come in and say I can do it on my own and I'm just going
18 to look within and I'm going to stop drinking because I
19 haven't drank while I've been in prison. And that hasn't
20 been really the greatest answer.

21 **INMATE PORRAS:** Yeah, I know.

22 **ATTORNEY SPARKS:** For the way most people see it.
23 So the question is, is how will you get support in the
24 community to abstain from drinking?

25 **INMATE PORRAS:** I have community support. I have my
26 friends and I also have a program, Three Rivers Indian
27 Lodge in Manteca.

1 **ATTORNEY SPARKS:** Okay. The -- You read that
2 letter, right, from your attorney at the time of your
3 trial. There's an argument made about voluntary
4 manslaughter. Do you remember that?

5 **INMATE PORRAS:** (Inaudible).

6 **ATTORNEY SPARKS:** And I know that at the time that
7 you believe that this probably should have been a
8 voluntary manslaughter case. Do you agree now that this
9 was a second degree murder conviction?

10 **INMATE PORRAS:** That's what the jury convicted me of
11 so that's what I have to face up to.

12 **ATTORNEY SPARKS:** Okay. And one of the elements of
13 a second degree murder conviction is intentionally taking
14 another person's life. Do you agree with that element?

15 **INMATE PORRAS:** Well when I picked up that knife and
16 swung it, there was an implied intent there that it was
17 going to do some damage.

18 **ATTORNEY SPARKS:** Okay. Do you think you've served
19 enough of a prison term to be found suitable for parole?

20 **INMATE PORRAS:** Yes, I do.

21 **ATTORNEY SPARKS:** Do you think you'd be dangerous if
22 you're released to the community?

23 **INMATE PORRAS:** No, never.

24 **ATTORNEY SPARKS:** Why not?

25 **INMATE PORRAS:** Because I'm not a dangerous person.
26 My record speaks for itself.

27 **ATTORNEY SPARKS:** Do you think you have enough

1 employable skills to be gainfully employed in the
2 community?

3 INMATE PORRAS: Yeah.

4 ATTORNEY SPARKS: And what are those skills?

5 INMATE PORRAS: Well I was doing carpet and tile
6 before I got locked up. I know how to work on the cars.
7 I can do pretty much everything. I just don't have State
8 certificates.

9 ATTORNEY SPARKS: Okay. Nothing further.

10 PRESIDING COMMISSIONER DAVIS: All right. Closing.

11 DEPUTY COMMISSIONER BLONIEN: Commissioner Davis.

12 PRESIDING COMMISSIONER DAVIS: Do you have a
13 question?

14 DEPUTY COMMISSIONER BLONIEN: I didn't read into the
15 record his psych report.

16 PRESIDING COMMISSIONER DAVIS: I'm sorry, yes,
17 please.

18 DEPUTY COMMISSIONER BLONIEN: And my mistake. I'm
19 sorry. Dr. Hewchuk noted that you're a model inmate with
20 no violent disciplinaries during your entire period of
21 incarceration. She went back and alluded to the report
22 of Dr. Joe Reed in 2-01 who assigned you a minimum risk
23 threat to both within an institutional setting and
24 outside (inaudible). And since that evaluation, inmate
25 Porras has continued -- continue to program well. His
26 risk factors remain essentially unchanged. I think she
27 probably meant programmed as well as you could in your C

1 status circumstances. You have strong family support in
2 Stockton who will serve to facilitate his reintegration
3 into community and risk factors for inmate Porras remain
4 unchanged since his previous evaluation in 2001. He is
5 currently at no greater risk of re-offending than the
6 average citizen. He's currently a suitable candidate for
7 parole release consideration with the recommendation that
8 he obtain total -- abstain totally from the use of
9 alcohol. And going back to Dr. Reed's report, as she
10 said, he also said you were a minimum risk within a
11 controlled setting, is below average and that within a
12 controlled setting your level of violence is considered
13 to be no more than the average citizen in the community,
14 again substance abuse is a risk factor which may be a
15 precursor to violence for this individual. That's it.

16 **PRESIDING COMMISSIONER DAVIS:** All right. Thank
17 you. Does the District Attorney have any additional
18 questions?

19 **DEPUTY DISTRICT ATTORNEY ISRAELS:** I have a question
20 of the Commissioners. I didn't get -- autopsy report and
21 I was just curious where some of the wounds were and --

22 **DEPUTY COMMISSIONER BLONIEN:** I'll pass it to you
23 (inaudible).

24 **DEPUTY DISTRICT ATTORNEY ISRAELS:** What was the
25 other, oh, the police report I think it was (inaudible)
26 autopsy.

27 **PRESIDING COMMISSIONER DAVIS:** And if you'll hand it

1 to Mr. Sparks please after that.

2 **DEPUTY DISTRICT ATTORNEY ISRAELS:** Okay. Sorry.

3 Okay. (Inaudible) thank you.

4 **DEPUTY COMMISSIONER BLONIEN:** I'll just go off
5 record.

6 **ATTORNEY SPARKS:** It's all right. She can do
7 closing while I'm looking at it.

8 **DEPUTY COMMISSIONER BLONIEN:** Okay.

9 **PRESIDING COMMISSIONER DAVIS:** All right. Would you
10 like to go ahead and close then.

11 **DEPUTY DISTRICT ATTORNEY ISRAELS:** I appreciate all
12 the comments that Mr. Porras has had to say. My only
13 concern is that there is a disparity between the facts as
14 he presents them and the -- the autopsy report and that's
15 the only concern that I want to bring to Mr. Porras and
16 the Commissioners' attention. I noticed on there that
17 there is a stab wound both on the front of the victim's
18 chest and on the back -- on his back as well. And I
19 don't know how Mr. Porras accounts for what happened on
20 his back. I understand Mr. Porras seems to say he
21 stabbed him twice and it appears there are two severe
22 stab wounds. The victim has abrasions all over his body.
23 So I don't know how many of those actually came from the
24 knife and how many didn't. But the two severe ones
25 include one in the front and one on the back and that
26 back one is the one that concerns me because one of the
27 witnesses apparently at the scene said that the victim

1 actually got up and ran away and Mr. Porras went after
2 him and stabbed him in the back. And that would be the
3 only concern that I have. I don't know if Mr. Porras's
4 memory was impaired because of the alcohol and doesn't
5 remember it today or -- of if he's covering up or what.
6 But that is probably my biggest concern about
7 Mr. Porras's parole but that's all.

8 **PRESIDING COMMISSIONER DAVIS:** All right. Thank
9 you. Mr. Sparks.

10 **ATTORNEY SPARKS:** I appreciate the comments from the
11 Deputy DA here today. I think that Mr. Porras could be
12 found suitable for parole and that he wouldn't
13 necessarily pose an unreasonable risk of danger to the
14 community. He does have parole plans which are in place.
15 He hasn't shown any violence while he's been
16 incarcerated. Refer back to the '98 report from the
17 psychologist where he makes a statement about this was a
18 young man probably not especially violence prone even at
19 the time of his commitment offense. So that -- as to his
20 prior social history I'd say that that was who Mr. Porras
21 was and that during his incarceration he's shown that
22 he's really not a violent man. He does have this one
23 incident which was alcohol related where the report goes
24 on to say that this commitment offense which (inaudible)
25 response to drinking, induced loss of inhibition after
26 prolonged exposure to aggravation and stress. I think
27 that that would be a fairly accurate summary. Since that

1 time he's had good reviews from the psychological
2 departments which don't rate him as a -- as a risk to the
3 community. And since he was only 19 at this time of the
4 crime, he's 37 now, so he's definitely grown and matured
5 while incarcerated. You can hear from him about his
6 spiritual way of living which will be in place with his
7 parole plans as well which would I think -- one of the
8 major precursors that the Board of Parole Hearings is
9 probably concerned about is whether he'd return to
10 alcohol use and whether that would then lead to bad
11 decision making about what's going on and the
12 circumstances. I don't necessarily disagree with the
13 Deputy DA in the way that the crime happened. Maybe
14 Mr. Porras doesn't remember all the facts, but what's
15 relevant here today is that he's not talking about
16 (inaudible) involuntary manslaughter or voluntary
17 manslaughter conviction, he's admitting to a second
18 degree murder conviction, that he intentionally took this
19 victim's life or when he swung the knife that that act
20 was in and of itself violent enough to bring him to
21 prison for this sentence that he's incarcerated for. So
22 he -- he has shown more insight if you will into the
23 causative factors and motivation for the crime or his
24 present mental state with regards to the crime is
25 sufficient to show that -- that he's rehabilitated to
26 that. He does have some vocational skills in radiology
27 as well as prior skills before coming to prison. But

1 more important than the skill set is that he actually has
2 a job waiting for him. So I think the Board of Parole
3 Hearings should be comfortable that he has reasonable
4 parole plans, that he's done what is available to him in
5 the institution to become a better person and that he no
6 longer poses an unreasonable risk of danger to the
7 community. Thank you.

8 **PRESIDING COMMISSIONER DAVIS:** All right. Thank
9 you. Mr. Porras, now is your opportunity to address the
10 Panel directly and tell us why you believe that you're
11 suitable for parole.

12 **INMATE PORRAS:** I've done a lot to change my
13 (inaudible) my thinking where I was when I was 19. I'm a
14 whole different man now. I will never, ever put myself
15 in this place again or anybody else (inaudible). This is
16 a stupid incident that happened when I was young and a
17 stupid decision I never thought -- thought about. Now I
18 can show you that I have changed and I am a better person
19 now. Thank you.

20 **PRESIDING COMMISSIONER DAVIS:** All right. Thank you
21 very much. We'll now recess for deliberation.

22 **R E C E S S**

23 --oOo--
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CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER BLONIEN: We're on record.

PRESIDING COMMISSIONER DAVIS: All right. Let the record reflect that all those previously identified as being in the room have returned. This is in the matter of Mr. Porras, CDC number E-37606. The Panel reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. We come to this conclusion first by the commitment offense. The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. And the motive for the crime was inexplicable in relation to the offense. These conclusions are drawn from the Statement of Fact wherein the prisoner for reasons still best known to himself chose to introduce a knife into a fistfight where he states he was not losing the fight and the victim had no weapons. In terms of previous record, we find that prior criminal conduct consists of apparently violations relating to alcohol and prior property crimes. We find that you failed to profit from society's previous attempts to correct criminality, specifically juvenile hall and juvenile probation. With

1 regard to institutional behavior, we note that there are
2 eight 128(a) counseling chronos, the last of which was in
3 5-05, one of those having to do with grooming standards,
4 specifically the length of your hair. And there were
5 prior -- four serious 115 disciplinary reports, the last
6 of those was in 9-98 of all of which dealt with grooming
7 standards which I think were all due to the length of
8 your hair which has been something that has been settled.
9 And so we think that should be -- you need to -- this
10 Panel did not -- did not look at the -- at the discipline
11 in terms of anything to do with the decision. But that
12 is something that you should clear up and get with your
13 counselor about getting those things expunged from your
14 record, all right, so they're just not there anymore.
15 All right.

16 **INMATE PORRAS:** If you recognize that, why would you
17 still (inaudible)?

18 **PRESIDING COMMISSIONER DAVIS:** Well, sir, we're not
19 using it. That's what I just said. We are not using
20 them and I made that very -- that very clear but this way
21 it's on the record that we -- we recognize that they're
22 there but we also recognize the reason for them being
23 there and what's transpired since then. Okay. All
24 right. The psychological report of June 2005 by
25 Dr. Hewchuk, H-E-W-C-H-U-K, was supportive of release and
26 conditioned upon continued abstinence from alcohol. In
27 **NEVILLE PORRAS E-37606 DECISION PAGE 2 8/15/06**

1 terms of parole plans, we find that they are appropriate.
2 You have a residence with your mother and work certainly
3 through Curtis Riggins. The Panel wants to commend you
4 on your parole plans. We think that you do have good
5 parole plans and certainly some very strong family
6 support. So that's something to be jealously guarded.
7 With regard to the 3042 Notices, we note the District
8 Attorney from San Joaquin County is here in person by
9 representative and does oppose parole. Nevertheless, we
10 do want to commend you for your effectively discipline
11 free -- when you have those other things expunged, you'll
12 be discipline-free of serious 115's, your programming
13 prior to your change in custody status and your
14 participation with the Native American Spirituality
15 program. This is a one year denial. And the Panel
16 recommends that you have no more 128's and continue with
17 your history of discipline-free on 115's, that as
18 available that you upgrade vocationally, as available
19 that you continue to participate in self-help programs
20 and we want you to know that Panels will also accept
21 independent reading on your part as long as you've done
22 something to chronicle that reading, that you have either
23 prepared a report of some kind talking about what you've
24 read and how that gives you insight into your -- the
25 crime -- committed, how you're going to keep from
26 committing that same type of crime again, how you're
27 NEVILLE PORRAS E-37606 DECISION PAGE 3 8/15/06

1 going to stay away from alcohol, something that's
2 pertinent to your particular situation or that you'll be
3 able to at least articulate to the Panel what it is
4 you've read and how it affects those things that I've
5 already stated plus anything else that you feel would be
6 important. Commissioner, do you have anything you'd like
7 to add?

8 **DEPUTY COMMISSIONER BLONIEN:** I really understand
9 C status and did my best to put it on the record that a
10 lot of things weren't available to you since your --
11 since your last hearing. But you have a responsibility
12 also because this is your hearing; it's your opportunity
13 to bring to the Board the changes that have been made in
14 your -- in your life that make you suitable for parole.
15 And you didn't come here and tell us what you --
16 everything you've been doing. We tried to draw a lot of
17 it out of you. But if you come in next time ready with a
18 resume of what you're doing --

19 **INMATE PORRAS:** Right.

20 **DEPUTY COMMISSIONER BLONIEN:** -- you're serving
21 yourself and that's the purpose of this -- of this
22 hearing. And you have an opportunity to read your
23 C-File, you have an Olson Review. The police reports and
24 autopsy reports are in there. And maybe you don't
25 remember. But you have a responsibility to yourself and
26 to this Panel to come in with the best information

27 **NEVILLE PORRAS E-37606 DECISION PAGE 4 8/15/06**

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1 possible and be prepared. And I hope you do that.

2 **INMATE PORRAS:** (Inaudible) the autopsy report, you
3 know, I can't explain -- I don't know --

4 **DEPUTY COMMISSIONER BLONIEN:** And that's okay. I
5 mean we're not asking you to reinvent --

6 **INMATE PORRAS:** Yeah.

7 **DEPUTY COMMISSIONER BLONIEN:** -- a story.

8 **INMATE PORRAS:** But that's like what you're saying
9 now but I can't make them (inaudible) what they are.
10 They are what they are.

11 **DEPUTY COMMISSIONER BLONIEN:** They are what they
12 are.

13 **INMATE PORRAS:** (Inaudible) going to change.

14 **DEPUTY COMMISSIONER BLONIEN:** And then read the
15 transcript about how you talk about it.

16 **INMATE PORRAS:** Yeah.

17 **DEPUTY COMMISSIONER BLONIEN:** It's very confusing.

18 **INMATE PORRAS:** Yeah, I can only say what I can say
19 (inaudible) there I don't know how they got there. I
20 told you how -- what I did and my part. And it's never
21 going to change. It's always going to be the same exact
22 same thing.

23 **DEPUTY COMMISSIONER BLONIEN:** Well you read the
24 transcript and you read the report and think about it and
25 come in totally prepared. And I wish you well.

26 **PRESIDING COMMISSIONER DAVIS:** All right.

27 **NEVILLE PORRAS** E-37606 **DECISION PAGE 5** 8/15/06

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1 Mr. Porras, we do wish you the best of luck and we are
2 adjourned.

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23 PAROLE DENIED ONE YEAR

24 THIS DECISION WILL BE FINAL ON DEC 13 2006

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT DATE,
26 THE DECISION IS MODIFIED

27 NEVILLE PORRAS E-37606 DECISION PAGE 6 8/15/06


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**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, Marsha Mees, a duly designated transcriber, VINE, MCKINNON & HALL, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 64 and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, at SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of NEVILLE PORRAS, CDC No. E-37606, on AUGUST 15, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated November 6, 2006, at Sacramento County, California.



Marsha Mees
Transcriber
VINE, MCKINNON & HALL

EXHIBIT "B"

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number E-37606

NEVILLE PORRAS)
_____))
_____)

**INMATE
COPY**

CORRECTIONAL TRAINING FACILITY
SOLEDAD, CALIFORNIA
JULY 12, 2005

PANEL PRESENT:

SUSAN FISHER, Presiding Commissioner
ROLANDO MEJIA, Deputy Commissioner

OTHERS PRESENT:

NEVILLE PORRAS, Inmate
PAT FOX, Attorney for Inmate
TOM SAWYER, Commissioner, Observer

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Ramona Cota

Peters Shorthand Reporting

2005 AUG -8 AM 8:35

RECEIVED

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P R O C E E D I N G S

DEPUTY COMMISSIONER MEJIA: We are on record.

PRESIDING COMMISSIONER FISHER: All right, thank you. This is going to be a Subsequent Parole Consideration Hearing for Neville Porras, CDC number E-37606. Today's date is 7/12/05 and we are located at the Correctional Training Facility. The inmate was received on 12/1/89 from San Joaquin County. The life term began on 12/1/89 and the minimum eligible parole date is 6/5/99. The controlling offense for which the inmate has been committed is second degree murder, case number 43369, count one, Penal Code Section 187. The controlling -- I said that. I'm sorry, Penal Code 187. The inmate received a term of 15 -- 16 years to life. Again, the minimum eligible parole date is 6/5/99. And, Mr. Porras, we are going to be tape-recording today so for the purpose of voice identification for the transcriber we are each going to say our first and last name and spell our last name. When I get to you I need your CDC number, all right? I'm going to start with myself and go to my left. Susan Fisher, F-I-S-H-E-R, Commissioner.

COMMISSIONER SAWYER: Tom Sawyer,

1 S-A-W-Y-E-R, Commissioner.

2 DEPUTY COMMISSIONER MEJIA: Rolando
3 Mejia, M-E-J-I-A, Deputy Commissioner.

4 ATTORNEY FOX: Pat Fox, F-O-X, attorney
5 for Mr. Porras.

6 INMATE PORRAS: Neville Porras,
7 P-O-R-R-A-S, E-37606.

8 PRESIDING COMMISSIONER FISHER: Spell
9 your last name, please.

10 INMATE PORRAS: P-O-R-R-A-S.

11 PRESIDING COMMISSIONER FISHER: Did you
12 do that? I'm sorry, I'm missed it. I wrote
13 something down wrong and it's throwing me off
14 for the entire first part of the hearing. Okay.
15 I would like to note for the record that we have
16 two correctional officers present who are here
17 for security purposes only and will not be
18 participating in the hearing. And before I can
19 get started I need to ask you to read the
20 American with Disabilities Act statement that's
21 there in front of you, please.

22 INMATE PORRAS:

23 "ADA, Americans with Disabilities
24 Act. The Americans with
25 Disability Act, ADA, is a law to
26 help people with disabilities.
27 Disabilities are problems that

1 make it harder for some people to
2 see, hear, breathe, walk, talk,
3 learn, think, work, or take care
4 of themselves than it is for
5 others. Nobody can keep --"

6 I need my glasses.

7 PRESIDING COMMISSIONER FISHER: Do you
8 normally use glasses?

9 INMATE PORRAS: Yes.

10 PRESIDING COMMISSIONER FISHER: Do you
11 want me to read it for you?

12 INMATE PORRAS: Sure.

13 PRESIDING COMMISSIONER FISHER: I can do
14 it.

15 INMATE PORRAS: I can finish it.

16 PRESIDING COMMISSIONER FISHER: That's
17 okay, I'll do it. All right.

18 "The Americans with Disabilities
19 Act is a law to help people with
20 disabilities. Disabilities are
21 problems that make it harder for
22 some people to see, hear, breathe,
23 talk, walk, learn, think or to
24 take care of themselves than it is
25 for others. Nobody can be kept
26 out of public places or activities
27 because of a disability. If you

1 have a disability you have the
2 right to ask for help to get ready
3 for your BPT Hearing, get to the
4 hearing, talk, read forms and
5 papers and understand the hearing
6 process. BPT will look at what
7 you ask for to make sure that you
8 have a disability that is covered
9 by the ADA and that you have asked
10 for the right kind of help. If
11 you do not get help or if you
12 don't get the kind of help you
13 think you need ask for a BPT 1074
14 Grievance Form. You can also get
15 help to fill it out."

16 Do you understand that?

17 INMATE PORRAS: Yes, I do.

18 PRESIDING COMMISSIONER FISHER: Okay.

19 And I want to note for the record that
20 Mr. Porras did sign a BPT 1073 form on December
21 7 of '04 and stated that he has no disabilities.
22 I just have a few questions that I need to ask
23 you before we can move on.

24 INMATE PORRAS: Okay.

25 PRESIDING COMMISSIONER FISHER: The first
26 one was whether or not you needed glasses to
27 read. So now that we've established that, did

1 you do a review on your Central File before you
2 came to the hearing?

3 INMATE PORRAS: Yes, I did.

4 PRESIDING COMMISSIONER FISHER: Did you
5 have your glasses?

6 INMATE PORRAS: Yes.

7 PRESIDING COMMISSIONER FISHER: Okay. Do
8 you have any hearing problems?

9 INMATE PORRAS: No, I don't.

10 PRESIDING COMMISSIONER FISHER: Okay.

11 Have you ever be included in the CCCMS or EOP
12 programs while in prison?

13 INMATE PORRAS: No.

14 PRESIDING COMMISSIONER FISHER: And prior
15 to coming to prison for this offense how far did
16 you get in school?

17 INMATE PORRAS: Tenth grade.

18 PRESIDING COMMISSIONER FISHER: Okay. Is
19 there any disability that you have that you
20 think would prevent you from being able to
21 participate in the hearing today?

22 INMATE PORRAS: No.

23 PRESIDING COMMISSIONER FISHER: Okay.

24 This hearing is being conducted pursuant to
25 Penal Code Sections 3041 and 3042 and the rules
26 and regulations of the Board of Prison Terms
27 that govern parole consideration hearings for

1 life inmates. And as I'm sure you know the
2 purpose of the hearing today is to consider your
3 commitment offense, your prior criminal and
4 social history and your behavior and programming
5 since you've been in prison for the offense. We
6 have had the opportunity to review your files.
7 We are going to give you the opportunity to make
8 any corrections that you need to today, all
9 right? We are going to reach a decision today
10 as to whether or not we find you suitable for
11 parole. And if we do find you suitable I am
12 going to explain to you today what the length of
13 your confinement will be.

14 INMATE PORRAS: Okay.

15 PRESIDING COMMISSIONER FISHER: Before we
16 recess to deliberate I am going to give you and
17 Ms. Fox the opportunity to make a statement
18 about your suitability. I want to remind you
19 you are not required to admit or discuss the
20 offense today but that the panel accepts the
21 findings of the court to be true. Do you
22 understand that?

23 INMATE PORRAS: Okay.

24 PRESIDING COMMISSIONER FISHER: The
25 California Code of Regulations states that
26 regardless of time served a life inmate shall be
27 found unsuitable for and denied parole if in the

1 judgment of the panel he would pose an
2 unreasonable risk of danger to society if
3 released from prison. You have rights that are
4 related to this hearing. They include the right
5 to a timely notice of the hearing, the right to
6 review your Central File and the right to
7 present relevant documents. Counsel, have your
8 client's rights been met?

9 ATTORNEY FOX: Yes, as to this hearing.

10 PRESIDING COMMISSIONER FISHER: You also
11 have the right, Mr. Porras, to an impartial
12 panel. And I just want to clarify for you that
13 Mr. Mejia, who is on the end down there with the
14 files, and myself, are your panel today.
15 Mr. Sawyer is here observing. Okay? Do you
16 have any objections to your panel?

17 INMATE PORRAS: No, nothing really.

18 PRESIDING COMMISSIONER FISHER: Okay.
19 Counsel, any objections to the panel?

20 ATTORNEY FOX: No, no objection, thank
21 you.

22 PRESIDING COMMISSIONER FISHER: I am
23 going to give you a written copy of our decision
24 today. It is going to be tentative and will be
25 effective within 120 days. And then a copy of
26 the decision and a copy of the transcript of the
27 hearing is going to be sent to you. Now, in May

1 of last year they changed the way that you
2 appeal Board decisions and now all appeals go
3 directly to the courts. So if you need more
4 information about that your correctional
5 counselor should have it and also it should be
6 in the prison library. All right? All I'm
7 doing now is asking Ms. Fox to check against my
8 checklist to make sure that she and I both have
9 the same information before we start.

10 ATTORNEY FOX: Yes. I am going to put a
11 check in the box for supporting letters because
12 we do have one from the San Joaquin Public
13 Defender's Office.

14 PRESIDING COMMISSIONER FISHER: Okay,
15 good.

16 ATTORNEY FOX: Other than that I do have
17 everything.

18 PRESIDING COMMISSIONER FISHER: All
19 right, thank you.

20 ATTORNEY FOX: Thank you.

21 PRESIDING COMMISSIONER FISHER: All
22 right. And is there anything to submit?

23 ATTORNEY FOX: Not that we haven't
24 already.

25 PRESIDING COMMISSIONER FISHER: All
26 right. Any preliminary objections?

27 ATTORNEY FOX: No, no objections.

1 PRESIDING COMMISSIONER FISHER: Okay. Is
2 Mr. Porras going to be speaking with us?

3 ATTORNEY FOX: Yes.

4 PRESIDING COMMISSIONER FISHER: I need
5 you to raise your right hand, I'm going to swear
6 you in. Do you solemnly swear or affirm that
7 the testimony you give at this hearing will be
8 the truth and nothing but the truth?

9 INMATE PORRAS: Yes I do.

10 PRESIDING COMMISSIONER FISHER: All
11 right. What I am going to do, Mr. Porras, is
12 read a summary of the crime into the record and
13 then I'm going to ask you to tell me if you
14 agree with what I read, all right? If there are
15 areas where you disagree or areas where you
16 would like to elaborate you may certainly do
17 that. And counsel, I will use the appellate
18 decision if there is no objection.

19 ATTORNEY FOX: No, no objection.

20 PRESIDING COMMISSIONER FISHER: All
21 right. This is on page three under Facts: "It
22 was late in the evening of August 11 and early
23 in the morning of August 12, 1988 when the
24 victim, Shawn Bartholomew --" For the
25 transcriber that's S-H-A-W-N, last name
26 B-A-R-T-H-O-L-O-M-E-W. "-- and his friend,
27 Cosmo Allen Byrd --" And that's C-O-S-M-O,

1 middle name A-L-L-E-N, last name B-Y-R-D. "--
2 stepped off with some friends under Waterloo
3 Bridge." And that's W-A-T-E-R-L-O-O.

4 "The victim and Byrd went to
5 Waterloo Liquors where Byrd left
6 the victim to return home. Byrd
7 heard someone yell, quote, I'm
8 here, as he walked away from the
9 liquor store. He turned around
10 and saw someone who resembled the
11 defendant running. Byrd continued
12 home. During that same night the
13 defendant was in his front yard
14 drinking with his brother, Willie
15 Lester, that's W-I-L-L-I-E, and
16 Lester's friend, Mike Garcia.
17 William Moose Phillips and Dennis
18 Squealer Wheeler passed in front
19 of the house and exchanged angry
20 words with the defendant. When
21 Phillips and Wheeler left the
22 defendant and his group armed
23 themselves, the defendant with a
24 butcher knife, and enlisted the
25 aid of another friend James
26 Azevedo. That's A-Z-E-V-E-D-O.
27 The group began searching for

1 Phillips but without success. All
2 but Lester returned to the
3 defendant's front yard. Shortly
4 after they returned they heard
5 yelling from the alley. The voice
6 sounded to them like Lester's,
7 although Lester denied having been
8 at the scene. After hearing the
9 yelling the defendant left the
10 home to look for his brother.
11 Eventually the defendant saw the
12 victim and chased him down. The
13 defendant held the victim by the
14 hair and said, where's my brother,
15 where's my brother. Lester and
16 Garcia arrived after the defendant
17 caught the victim. Lester hit the
18 victim with a stick and Garcia
19 kicked the victim in the head.
20 The defendant was the only one in
21 the group with a knife and he
22 later admitted to law enforcement
23 to stabbing the victim. The group
24 left the victim and returned to
25 the defendant's yard. Paramedics
26 responded to the scene and found
27 the bloody victim lying in the

1 fetal position. The victim died
2 of a stab wound which pierced his
3 heart, liver and right lung. On
4 October"

5 Okay, I think that gets into the sentence. All
6 right. Is that correct?

7 INMATE PORRAS: Pretty much. But we
8 never went searching for anybody that night.

9 PRESIDING COMMISSIONER FISHER: Okay.
10 Tell me just kind of, just give me a thumbnail
11 sketch of what did happen.

12 INMATE PORRAS: Well, it started with a
13 argument between my little brother and Moose.
14 They exchanged words, Moose went down the
15 street, came back and they exchanged more words.
16 He went up the street, started yelling back
17 threats at my little brother. My little brother
18 kept throwing -- kept arguing. Moose left
19 around the corner. Our houses aren't that far
20 apart. They went around the corner, they start
21 throwing rocks and bottles over the fence. We
22 went up to the corner or near the corner to see
23 if anybody was there throwing rocks and bottles;
24 there was nobody there. We came back home. We
25 never went searching out looking for anybody.

26 PRESIDING COMMISSIONER FISHER: How did
27 you end up -- How did you end up where he was

1 stabbed?

2 INMATE PORRAS: It's only like maybe two
3 houses away.

4 PRESIDING COMMISSIONER FISHER: Okay.

5 INMATE PORRAS: It's not that big of a
6 distance.

7 PRESIDING COMMISSIONER FISHER: Okay. So
8 how did all that come down?

9 INMATE PORRAS: I was working on my car
10 that night. I was in the front yard working on
11 the car. Willie disappeared later on after the
12 argument and we heard him yelling, he was
13 screaming my name. Mike asked, where's Willie.
14 I asked him where my brother was. That's when
15 we went looking for Willie. And when we came
16 around the corner we ran into Cosmo and Shawn.

17 PRESIDING COMMISSIONER FISHER: All
18 right. And so how did -- When you ran into them
19 how did that escalate into the situation where
20 you stabbed him?

21 INMATE PORRAS: Well before the fight
22 actually started it was just me. I went after
23 -- I went to the corner, Mike went the other
24 way. He thought that they were in the alley
25 because that's where it sounded like it came
26 from.

27 PRESIDING COMMISSIONER FISHER: So were

1 you looking for your brother at that point? Is
2 that what you were doing?

3 INMATE PORRAS: Yes.

4 PRESIDING COMMISSIONER FISHER: Okay, go
5 ahead.

6 INMATE PORRAS: And when we met face to
7 face I asked if they seen anybody, you know, my
8 brother back there. Shawn was standing just in
9 front of Cosmo, Cosmo was standing behind him,
10 and he said something and he took a swing at me.
11 Shawn kind of backed out of the way and me and
12 Cosmo went at it. And then we both went at it
13 for a little bit. I had the knife, I pulled it.
14 I didn't know if I hit anything, I just swung
15 it. It went and fell on the ground. Mike ran
16 up and chased Cosmo off and then came back and
17 that's when Shawn was -- Well Shawn started to
18 run too and that's the last we seen. We went
19 back to the alley looking for my brother.

20 PRESIDING COMMISSIONER FISHER: Okay. So
21 how did Shawn get stabbed?

22 INMATE PORRAS: Apparently the knife got
23 him.

24 PRESIDING COMMISSIONER FISHER: When you
25 swung it?

26 INMATE PORRAS: Yeah.

27 PRESIDING COMMISSIONER FISHER: Weren't

1 you fighting with the other guy?

2 INMATE PORRAS: Yeah. I started fighting
3 with Cosmo first and then Shawn got in --

4 PRESIDING COMMISSIONER FISHER: Was Shawn
5 right there in the area where you were fighting?

6 INMATE PORRAS: Yeah, we were fighting.

7 Shawn got into it after me and Cosmo were

8 fighting for a little bit.

9 PRESIDING COMMISSIONER FISHER: All
10 right. So after that, after the fight and after
11 Mike came and chased the guy away that you were
12 fighting with, you never picked up the knife
13 again?

14 INMATE PORRAS: No.

15 PRESIDING COMMISSIONER FISHER: When did
16 you realize that Shawn had been stabbed?

17 INMATE PORRAS: Like five o'clock the
18 next afternoon.

19 PRESIDING COMMISSIONER FISHER: When the
20 police came?

21 INMATE PORRAS: Yeah.

22 PRESIDING COMMISSIONER FISHER: What did
23 he do? He just ran?

24 INMATE PORRAS: Yes.

25 PRESIDING COMMISSIONER FISHER: The two
26 of them ran?

27 INMATE PORRAS: Yeah.

1 PRESIDING COMMISSIONER FISHER: Okay.
2 Did you guys have a history with these guys?
3 Had you fought with them before?

4 INMATE PORRAS: Actually we was with
5 Moose. We all knew each other, Moose, Cosmo,
6 Shawn.

7 PRESIDING COMMISSIONER FISHER: I've seen
8 that.

9 INMATE PORRAS: We were all friends at
10 one time.

11 PRESIDING COMMISSIONER FISHER: But what
12 about -- I mean, why would he take a swing at
13 you?

14 INMATE PORRAS: Because he was, I guess,
15 better friends with Moose and them.

16 PRESIDING COMMISSIONER FISHER: I'm not
17 talking about Moose. Because you said when you
18 came around and asked them if they'd seen your
19 brother --

20 INMATE PORRAS: Yeah.

21 PRESIDING COMMISSIONER FISHER: -- that
22 Moose took a swing at you.

23 ATTORNEY FOX: Cosmo.

24 PRESIDING COMMISSIONER FISHER: I'm
25 sorry.

26 INMATE PORRAS: Yes, Cosmo.

27 PRESIDING COMMISSIONER FISHER: I'm so

1 confused.

2 INMATE PORRAS: Next to Waterloo Liquors
3 is the backyard of Moose's house. That's where
4 they were before.

5 PRESIDING COMMISSIONER FISHER: Okay.
6 I'm sorry, the nicknames are throwing me off
7 here. Okay. But the question remains the same.
8 When you came up to him and said, you said you
9 were looking for your brother and asked them if
10 they'd seen your brother, why would he take a
11 swing at you?

12 INMATE PORRAS: Well, because actually I
13 guess they talked before the fight started,
14 Moose and Cosmo. There was another guy in the
15 truck that showed up too that we didn't know who
16 he was.

17 PRESIDING COMMISSIONER FISHER: Okay, but
18 that doesn't answer my question, the fact that
19 they talked before. What issue was going on
20 between you that his reaction to seeing you and
21 having you ask him if he'd seen your brother was
22 that he stepped up and took a swing at you?

23 INMATE PORRAS: I have no idea why.

24 PRESIDING COMMISSIONER FISHER: These
25 guys hadn't had any kind of prior issues with
26 you? You said you'd been friends.

27 INMATE PORRAS: No, I hadn't seen -- I'd

1 seen Cosmo around but I haven't seen Shawn since
2 like the late '86.

3 PRESIDING COMMISSIONER FISHER: All
4 right. Okay. Anything else that we didn't
5 cover? So at the time that you went back to
6 your house you didn't know that, you didn't know
7 that Shawn had been stabbed. Did you find your
8 brother?

9 INMATE PORRAS: Yeah.

10 PRESIDING COMMISSIONER FISHER: How was
11 he?

12 INMATE PORRAS: He was in our backyard
13 laying on the ground saying somebody got him or
14 something.

15 PRESIDING COMMISSIONER FISHER: Did you
16 ever know who it was?

17 INMATE PORRAS: No.

18 PRESIDING COMMISSIONER FISHER: All
19 right. Let's talk about your prior history.
20 All right. I'm just looking at the prior Board
21 Report; this is from October of 2003. I just
22 want to get a couple of things on the record.
23 It says you were 16 the first time you were
24 booked by the sheriff's office for being out of
25 control. That was in 1985. How old were you?
26 You were 16 at that time. And then in '86, a
27 year later -- You were 17 when you were arrested

1 for burglary?

2 INMATE PORRAS: Yes.

3 PRESIDING COMMISSIONER FISHER: Okay, and
4 made a ward of the court. And did you actually
5 spend the 60 days in juvenile hall for that?

6 INMATE PORRAS: No. Not the whole 60
7 days.

8 PRESIDING COMMISSIONER FISHER: But you
9 did some time in juvenile hall that time. And
10 then in April of '86 it says that you were
11 transferred to Alameda County for trespassing.
12 What was that about?

13 INMATE PORRAS: I think what that was is
14 the violation was transferred to --

15 PRESIDING COMMISSIONER FISHER: Okay.
16 I'm more interested in what the trespass was.

17 INMATE PORRAS: I'm not sure what that --

18 PRESIDING COMMISSIONER FISHER: What were
19 you doing? What was the behavior that you got
20 in trouble for?

21 INMATE PORRAS: I think it was being on a
22 schoolyard.

23 PRESIDING COMMISSIONER FISHER: Okay.
24 Then you were picked up for a DUI in '86 in
25 November. Then another burglary, second, in
26 '87. And then it says under adult arrests you
27 had four vehicular violations. What were they?

1 INMATE PORRAS: I think it was driving
2 without a license, driving on a suspended and I
3 think the other one was like an exhibition of
4 speed/reckless thing.

5 PRESIDING COMMISSIONER FISHER: Okay.
6 Was your license taken away with the DUI?

7 INMATE PORRAS: Yeah, they suspended it I
8 think after the second driving on a suspended.

9 PRESIDING COMMISSIONER FISHER: Okay.

10 INMATE PORRAS: Or driving without a
11 license.

12 PRESIDING COMMISSIONER FISHER: Okay.
13 Let me tell you what we've got here as far as
14 information about your social history. Let me
15 know if this is true as we go through it. You
16 were born in Montana?

17 INMATE PORRAS: Yeah.

18 PRESIDING COMMISSIONER FISHER: Okay. It
19 says you were raised in Newark but ended up in
20 Stockton.

21 INMATE PORRAS: That's right.

22 PRESIDING COMMISSIONER FISHER: So how
23 old were you when you moved to California?

24 INMATE PORRAS: I think less than a year
25 old.

26 PRESIDING COMMISSIONER FISHER: Wow, that
27 was fast.

1 INMATE PORRAS: Yeah.

2 PRESIDING COMMISSIONER FISHER: Okay. It
3 says you're in the middle of seven kids?

4 INMATE PORRAS: Yeah.

5 PRESIDING COMMISSIONER FISHER: Wow. How
6 many sisters, how many brothers?

7 INMATE PORRAS: I have three brothers and
8 three sisters.

9 PRESIDING COMMISSIONER FISHER: Okay.
10 Are your parents alive?

11 INMATE PORRAS: Yes.

12 PRESIDING COMMISSIONER FISHER: Are they
13 married to each other?

14 INMATE PORRAS: Yes.

15 PRESIDING COMMISSIONER FISHER: I just
16 want to be sure. Are you in contact with them?

17 INMATE PORRAS: Yes.

18 PRESIDING COMMISSIONER FISHER: How about
19 your brothers and sisters?

20 INMATE PORRAS: Yes.

21 PRESIDING COMMISSIONER FISHER: It says
22 here that you have some brothers that have a
23 history of some problems. You have a brother
24 who has an alcohol issue and you have some
25 brothers that -- Did your brothers actually go
26 to prison? It says a history of felonies. Are
27 any in prison?

1 INMATE PORRAS: Well my youngest brother,
2 he caught -- he's in this case with me. My
3 oldest brother, he went to YA for I think a
4 year. And my middle brother Morgan, he's in
5 Pelican Bay right now.

6 PRESIDING COMMISSIONER FISHER: What for?

7 INMATE PORRAS: Murder.

8 PRESIDING COMMISSIONER FISHER: And your
9 little brother was part of this case too?

10 INMATE PORRAS: Yeah, that's Willie
11 Lester.

12 PRESIDING COMMISSIONER FISHER: Well, I
13 know that he was -- I knew he was there that
14 night. I didn't realize that he was part of it.

15 INMATE PORRAS: Yeah, they gave him a
16 year in Vision Quest.

17 PRESIDING COMMISSIONER FISHER: Did he
18 plead to something or was he convicted of
19 something?

20 INMATE PORRAS: I think he pled to it.

21 PRESIDING COMMISSIONER FISHER: Do you
22 know what it was?

23 INMATE PORRAS: I think it was assault
24 with intent to do great bodily injury.

25 PRESIDING COMMISSIONER FISHER: Let's
26 see. Never been married and no children, right?

27 INMATE PORRAS: No.

1 PRESIDING COMMISSIONER FISHER: And tell
2 me again how far you got in school.

3 INMATE PORRAS: Tenth grade.

4 PRESIDING COMMISSIONER FISHER: Okay.
5 And was that because of this crime or was it
6 related to other stuff that you were doing?

7 INMATE PORRAS: Related to other stuff.

8 PRESIDING COMMISSIONER FISHER: Since
9 you've been in prison or prior to that did you
10 graduate or get your GED?

11 INMATE PORRAS: I got my GED in '97.

12 PRESIDING COMMISSIONER FISHER: All
13 right, let's see here. You'd been drinking that
14 night. How drunk were you?

15 INMATE PORRAS: I'd say about a case and
16 I think almost a 12-pack maybe.

17 PRESIDING COMMISSIONER FISHER: Among how
18 many?

19 INMATE PORRAS: Three of us.

20 PRESIDING COMMISSIONER FISHER: Over just
21 the course of that evening?

22 INMATE PORRAS: Yeah.

23 PRESIDING COMMISSIONER FISHER: So you
24 were probably pretty drunk. How old were you
25 when you started drinking?

26 INMATE PORRAS: I first started drinking
27 I was maybe 15.

1 PRESIDING COMMISSIONER FISHER: Of that
2 year?

3 INMATE PORRAS: No, I was 15 years old.

4 PRESIDING COMMISSIONER FISHER: I'm
5 sorry, I thought you said -- the fan is a little
6 loud. I thought you said, May 15. And I was
7 thinking, well that's not a very, that's kind of
8 a vague answer. Okay, when you were 15.

9 INMATE PORRAS: Yeah.

10 PRESIDING COMMISSIONER FISHER: All
11 right. And you were 16, 17 at the time?

12 INMATE PORRAS: Nineteen.

13 PRESIDING COMMISSIONER FISHER: Nineteen,
14 okay. All right. And were you just drinking
15 like on weekends with your friends or were you
16 drinking (overlapping)?

17 INMATE PORRAS: Yeah, just on weekends.
18 Just on weekends.

19 PRESIDING COMMISSIONER FISHER: Okay.
20 And you were just getting drunk on the weekends?
21 Like a party, partying?

22 INMATE PORRAS: Well, not really drunk,
23 you know. We just had alcohol on the weekends.

24 PRESIDING COMMISSIONER FISHER: You were
25 pretty drunk that weekend with that much beer?

26 INMATE PORRAS: Yeah.

27 PRESIDING COMMISSIONER FISHER: All

1 right. What about other drugs?

2 INMATE PORRAS: No.

3 PRESIDING COMMISSIONER FISHER: Nothing
4 at all?

5 INMATE PORRAS: No. Well, everybody
6 experimented with a little weed but I didn't
7 like it.

8 PRESIDING COMMISSIONER FISHER: Okay. So
9 alcohol was your drug of choice?

10 INMATE PORRAS: Yeah.

11 PRESIDING COMMISSIONER FISHER: All
12 right. And it's funny, we normally have to turn
13 the fan off because people can't hear me but for
14 some reason today I'm having a hard time hearing
15 everybody. Okay. What did you do -- Aside from
16 getting in trouble what did you do after you
17 dropped out of school for work full time?

18 INMATE PORRAS: Stockton is kind of like
19 an industrial town, you find jobs all over. I
20 was doing construction work. Mostly carpet,
21 tile and mechanics.

22 PRESIDING COMMISSIONER FISHER: So you
23 were doing just labor?

24 INMATE PORRAS: Yeah.

25 PRESIDING COMMISSIONER FISHER: Kind of
26 whatever you could get.

27 INMATE PORRAS: Yeah.

1 PRESIDING COMMISSIONER FISHER: Did you
2 have a steady job at the time of this offense or
3 were you just piece-working?

4 INMATE PORRAS: Just off and on. Yeah,
5 piece-working.

6 PRESIDING COMMISSIONER FISHER: Okay.
7 All right, anything else about your life prior
8 to coming here, about your life growing up or
9 what was going on with you at the time of the
10 offense that we didn't talk about that you think
11 would be important for us to know?

12 INMATE PORRAS: (No audible response).

13 PRESIDING COMMISSIONER FISHER: Let's
14 talk about your parole plans. I'll tell you
15 what I've got here and then you can tell me if
16 it's correct. It says that you'll live with
17 your mom and she's in Stockton.

18 INMATE PORRAS: Yeah.

19 PRESIDING COMMISSIONER FISHER: And I
20 asked you -- Your parents are both still alive;
21 is that correct?

22 INMATE PORRAS: Yeah.

23 PRESIDING COMMISSIONER FISHER: Okay.
24 Are they still married?

25 INMATE PORRAS: They're still married.

26 PRESIDING COMMISSIONER FISHER: Okay. So
27 actually you'd go live with both parents, right?

1 INMATE PORRAS: Yeah.

2 PRESIDING COMMISSIONER FISHER: Okay.

3 And it says that you have a friend who is going
4 to offer you a job but it doesn't say what it
5 is. What would you do?

6 INMATE PORRAS: It's custom tile and
7 marble.

8 PRESIDING COMMISSIONER FISHER: Okay.

9 And that's Curtis Riggins.

10 INMATE PORRAS: Yeah.

11 PRESIDING COMMISSIONER FISHER: Okay.

12 (Indiscernible) file. Who are these people that
13 I'm looking at?

14 INMATE PORRAS: A picture of my mom.

15 PRESIDING COMMISSIONER FISHER: And two
16 girls.

17 INMATE PORRAS: That's Mikey and
18 Samantha, my nieces.

19 PRESIDING COMMISSIONER FISHER: And?

20 INMATE PORRAS: That's my oldest brother
21 Rich and his sons, Mark and Jeremy.

22 PRESIDING COMMISSIONER FISHER: What does
23 he do?

24 INMATE PORRAS: He's a chef.

25 PRESIDING COMMISSIONER FISHER: Is he?

26 INMATE PORRAS: Yeah.

27 PRESIDING COMMISSIONER FISHER: These are

1 your mom and dad, I assume.

2 INMATE PORRAS: Yeah, that's mom and dad.

3 PRESIDING COMMISSIONER FISHER: Okay.

4 And who is the baby?

5 INMATE PORRAS: That's my niece Eileen
6 and her daughter, Desiree. She says, I am
7 writing this letter in support of my son who has
8 been incarcerated in one of your prisons since
9 the age of 18. This young man has never been a
10 neighborhood bully but others have bullied him
11 because he was always small for his age. I know
12 that he tried his best to avoid trouble. He was
13 always helping those in need. I don't believe
14 this man would be a threat to society if
15 released from prison. Neville has a job waiting
16 for him upon his release. He'll be working with
17 his adopted brother, Curtis Riggins, who owns
18 and operates his own tile business here in
19 Stockton. I thank you for your time and
20 consideration. Neville has a place to live here
21 in Stockton either with me, his mother, or with
22 one of his siblings. All right. So is she
23 right? When you were a kid did you try to avoid
24 trouble?

25 INMATE PORRAS: Yes.

26 PRESIDING COMMISSIONER FISHER: What was
27 going on with you at this period of time as far

1 as home and just anything else that you were
2 getting into trouble that led to you being
3 arrested before this crime?

4 INMATE PORRAS: You know, just like minor
5 juvenile things. You go out with your buddies
6 and you run across schoolyards or whatever. You
7 don't really think that what you're doing is too
8 bad.

9 PRESIDING COMMISSIONER FISHER: What
10 about the burglary?

11 INMATE PORRAS: The burglary, that was
12 just dumb. First we was throwing rocks at
13 skunks and broke the window. We knocked the
14 window out of the Nugget Distributing Company
15 and decided to go in.

16 PRESIDING COMMISSIONER FISHER: Did you
17 steal anything or did you just (inaudible)?

18 INMATE PORRAS: No, just went in.

19 PRESIDING COMMISSIONER FISHER: All
20 right. Anything else about your parole plans or
21 any of the things that we've gone over that you
22 think that we haven't covered (inaudible)?

23 INMATE PORRAS: No.

24 PRESIDING COMMISSIONER FISHER: What
25 about in your parole plans do you plan to get
26 involved in a substance abuse program?

27 INMATE PORRAS: Yeah.

30

1 PRESIDING COMMISSIONER FISHER: Where
2 would you go?

3 INMATE PORRAS: Well we've got our own
4 little place outside Stockton called Three
5 Rivers Indian Lodge. It's got more of a -- kind
6 of like an AA-based program. I'd be going
7 there.

8 PRESIDING COMMISSIONER FISHER:
9 (Inaudible). Okay. If there's nothing else if
10 you'll turn to Commissioner Mejia, he's going to
11 go through your program.

12 DEPUTY COMMISSIONER MEJIA: Okay,
13 Mr. Porras, counsel, I will be covering
14 Mr. Porras' institutional adjustment in this
15 portion of this hearing since his last Board
16 appearance. I have reviewed his Central File
17 and Board Reports and psychiatric reports. If I
18 miss anything I will give you the opportunity
19 and him the opportunity to make comments at the
20 end of my presentation. The last actual Board
21 appearance was on October 3rd, 2001 wherein he
22 received a two year denial. And there was
23 another -- there was a 4/20/04 where he
24 stipulated for one year. Okay. The
25 recommendations were for him to remain
26 disciplinary-free, get self-help and earn
27 positive chronos. Classification score is

1 Medium-A -- 19. Custody level is Medium-A.
2 Your current work assignment. I know you have
3 completed your -- I could find it. What is your
4 current work assignment right now?

5 INMATE PORRAS: I don't have one right
6 now.

7 DEPUTY COMMISSIONER MEJIA: You're on a
8 waiting list?

9 INMATE PORRAS: No, I'm on C status, I'm
10 not allowed to work.

11 DEPUTY COMMISSIONER MEJIA: Are you
12 voluntarily -- Why are you on C status?

13 INMATE PORRAS: Because of my hair.

14 DEPUTY COMMISSIONER MEJIA: Huh?

15 INMATE PORRAS: Because of my hair.

16 DEPUTY COMMISSIONER MEJIA: Your hair.
17 What did you used to do before?

18 INMATE PORRAS: I was working in the
19 kitchen, culinary porter.

20 DEPUTY COMMISSIONER MEJIA: Okay.
21 Academic history, you have a GED in 1997, 9.1
22 GPL. Vocational history, completed the
23 radiological technology position in 1998. Any
24 other vocation that you have completed?

25 INMATE PORRAS: (No audible response).

26 DEPUTY COMMISSIONER MEJIA: Did you work
27 after that in the same line of work like x-ray.

1 tech in the hospital?

2 INMATE PORRAS: There was a lot of us in
3 the clinic at the time just switching back and
4 forth but then I transferred here from Solano.

5 DEPUTY COMMISSIONER MEJIA: Okay. Would
6 you be able to use that vocation in the streets?

7 INMATE PORRAS: Oh yeah.

8 DEPUTY COMMISSIONER MEJIA: Are you
9 licensed by the state?

10 INMATE PORRAS: Not yet, I still need a
11 few more hours.

12 DEPUTY COMMISSIONER MEJIA: You haven't
13 taken your license --

14 INMATE PORRAS: You've still got to put
15 in hours before you get the full license.

16 DEPUTY COMMISSIONER MEJIA: When did you
17 start trying to get certified?

18 INMATE PORRAS: In '97.

19 DEPUTY COMMISSIONER MEJIA: In '97?

20 INMATE PORRAS: Yeah.

21 DEPUTY COMMISSIONER MEJIA: And how long
22 does it take to get certified by the state?

23 INMATE PORRAS: I think you got to but in
24 25,000 hours, 2,500 hours.

25 DEPUTY COMMISSIONER MEJIA: And where are
26 you now?

27 INMATE PORRAS: I need -- I'm not even

1 halfway there.

2 DEPUTY COMMISSIONER MEJIA: Okay. Life
3 skills: Your self-help appears that you started
4 AA in '96 and you have some NA in 1999. Your
5 most recent chrono for attending AA and NA is
6 2000. Do you have any more? Are you still
7 attending?

8 INMATE PORRAS: No, I'm not allowed to.

9 DEPUTY COMMISSIONER MEJIA: When did you
10 stop?

11 INMATE PORRAS: I'm not allowed to.

12 DEPUTY COMMISSIONER MEJIA: Because of
13 the C status?

14 INMATE PORRAS: Yeah.

15 DEPUTY COMMISSIONER MEJIA: When did you
16 become a C status?

17 INMATE PORRAS: In '98, October '98.

18 DEPUTY COMMISSIONER MEJIA: October '98.
19 So you haven't been working since -- not been
20 assigned.

21 INMATE PORRAS: I haven't been assigned
22 since.

23 DEPUTY COMMISSIONER MEJIA: You have been
24 on C status since 1998 because of the grooming
25 standard.

26 INMATE PORRAS: Yeah.

27 DEPUTY COMMISSIONER MEJIA: Okay. Also

1 completed your, completed your -- In 1999, HIV
2 and hepatitis training. Disciplinary history: I
3 have four 115s, all in 1998, 4/98 through April
4 6, 1998. The last being on April 6, 1998. You
5 have eight 128(a)s from September 30, 1990
6 through May 9, 2004. That's the 115 that was
7 reduced to a 128(a). No gang affiliation was
8 noted and we are going to look at your
9 psychiatric report that was dated June 7, 2005
10 by Dr. Hewchuk, spelled H-E-W-C-H-U-K, staff
11 psychologist. This report was based on the
12 September 17, 2001 report and it's noted here
13 that in 2001 Dr. Joe Reed assigned minimum risk
14 threat to Inmate Porras, both within an
15 institutional setting and outside in the
16 community at large. Since that evaluation
17 Inmate Porras has continued to program well and
18 his risk factors remain essentially unchanged.
19 At the time of the instant offense Inmate Porras
20 was 19 years old, he is now 36. He remains
21 genuinely remorseful for his part in the tragic
22 loss of a human life and his lengthy prison
23 record is a reflection of both compliance and
24 motivation to change. Inmate Porras has a
25 strong family support system in Stockton,
26 California who will serve to facilitate his
27 reintegration into society. Risk factors for

1 Inmate Porras remain unchanged since his
2 previous evaluation in 2001 and he is currently
3 at no greater risk of re-offending than the
4 average citizen. Inmate Porras is currently a
5 suitable candidate for parole release
6 consideration with a recommendation that he
7 abstain totally from the use of alcohol. Any
8 additions or comments, counsel?

9 ATTORNEY FOX: No, thank you.

10 DEPUTY COMMISSIONER MEJIA: Let me return
11 this back to the Chair.

12 PRESIDING COMMISSIONER FISHER: All
13 right. As you're know we have a letter from the
14 public defender. I'm going to read parts of
15 that into the record. It says:

16 "After all this time has passed I
17 have no clear recollection of
18 Neville Porras but I had the
19 strongest possible memory of the
20 facts of the case. It seems that
21 Neville and some other young men
22 were sitting in front of their
23 house drinking fortified wine."

24 This is interesting. It says:

25 "While they were busy rotting
26 their brain cells with this
27 revolting concoction another young

1 man, the victim, was enjoying his
2 leisure time a few blocks away by
3 smashing the windows out of parked
4 cars. At one point Neville's
5 younger brother disappeared and
6 someone thought they heard him
7 calling for help. Everybody ran
8 off in different directions
9 looking for the brother and
10 Neville's path led him to where
11 the victim was. He said a drunken
12 quarrel was the result and the
13 death of the victim was the
14 outcome. I mention this because
15 while we were waiting for the jury
16 verdict everybody, and I do mean
17 everybody, thought they were going
18 to come back with a voluntary
19 manslaughter. That really would
20 have been a more appropriate
21 verdict due to the facts of this
22 case. Neville's conduct in prison
23 has been such that the Board can
24 act to rectify this old injustice
25 by paroling him now that 17 years
26 have passed (inaudible)."

27 And it's signed by James L. Carson, Public

1 Defender, by (indiscernible). Let me ask you
2 some questions about the crime events first and
3 then I have some questions for you about your
4 programming. First of all, why did you have a
5 knife?

6 INMATE PORRAS: It was on the ground, I
7 just picked it up.

8 PRESIDING COMMISSIONER FISHER: It was on
9 the ground between the two guys that you were
10 fighting with?

11 INMATE PORRAS: No, it was in the yard.
12 Just like some ivy at the edge of my yard, my
13 neighbor's yard.

14 PRESIDING COMMISSIONER FISHER: All
15 right. So when you heard your brother yelling
16 you decided to grab the knife and take it with
17 you?

18 INMATE PORRAS: Yeah.

19 PRESIDING COMMISSIONER FISHER: All
20 right. Did Shawn try to run away from you after
21 you stabbed him?

22 INMATE PORRAS: No, not initially. I
23 think he started running when he seen Mike.
24 When he seen Mike was chasing his friend.

25 PRESIDING COMMISSIONER FISHER: Okay.
26 And you said you just swung the knife and you
27 thought that was how he got stabbed?

1 INMATE PORRAS: Yeah.

2 PRESIDING COMMISSIONER FISHER: According
3 to the DA's Office he had two stab wounds; is
4 that correct?

5 ATTORNEY FOX: I don't think so, it was a
6 single stab wound that --

7 PRESIDING COMMISSIONER FISHER: I'm
8 looking at the DA's letter.

9 INMATE PORRAS: Some abrasions on his
10 back. I think there were abrasions --

11 DEPUTY COMMISSIONER MEJIA: Two stab
12 wounds in the back.

13 PRESIDING COMMISSIONER FISHER: I'm
14 sorry, what?

15 DEPUTY COMMISSIONER MEJIA: He had two
16 stab wounds in the back and one fatal in the
17 chest.

18 ATTORNEY FOX: Okay. I was referring to
19 the chest. It seemed that it went through the
20 heart.

21 DEPUTY COMMISSIONER MEJIA: Yes, through
22 the kidneys, through the diaphragm.

23 ATTORNEY FOX: The lung and the liver.

24 PRESIDING COMMISSIONER FISHER: The
25 liver, yes.

26 ATTORNEY FOX: But if there were others,
27 I don't know.

1 PRESIDING COMMISSIONER FISHER: All
2 right. It says in the appellate decision the
3 victim died of a stab wound that pierced his
4 heart, lung and liver.

5 ATTORNEY FOX: That must be where I read
6 it.

7 PRESIDING COMMISSIONER FISHER: What I
8 read earlier, okay. It says (inaudible). I
9 don't see anything else.

10 DEPUTY COMMISSIONER MEJIA: It does say
11 that two stab wounds were in the right upper
12 back in addition to the other.

13 PRESIDING COMMISSIONER FISHER: What are
14 you looking at, the probation officer's report?

15 DEPUTY COMMISSIONER MEJIA: Yes, present
16 offense.

17 PRESIDING COMMISSIONER FISHER: What
18 page?

19 DEPUTY COMMISSIONER MEJIA: Page one.

20 PRESIDING COMMISSIONER FISHER: Page one?
21 Okay, thank you.

22 DEPUTY COMMISSIONER MEJIA: That's where
23 I got it.

24 PRESIDING COMMISSIONER FISHER: Okay, all
25 right. It says:

26 "The victim, Shawn Bartholomew was
27 found with multiple abrasions,

1 contusions and three stab wounds.
2 Two of the stab wounds were in the
3 right upper back and were adjacent
4 to each other. The fatal wound
5 was to the left lower chest where
6 it hit the liver, went through the
7 diaphragm and through two parts of
8 the heart into the kidney."

9 ATTORNEY FOX: It sounds like there were
10 three.

11 PRESIDING COMMISSIONER FISHER: It says,
12 at this point. And I'm talking about further
13 down now. This is after the argument between
14 the two. It says:

15 "At this point there are two
16 versions. In one the victim's
17 friend left the scene and the
18 victim was left alone. The
19 defendant spoke to the victim and
20 got no response. The victim
21 started walking towards the
22 defendant and the defendant
23 started swinging and jabbing with
24 his knife. He hit the victim on
25 the side with the knife, assessed
26 the fatal wound. Witnesses saw
27 the victim run across the street

1 with the defendant chasing him.
2 Mike, James and Willie ran up.
3 Willie had a stick and proceeded
4 to hit the victim. Mike kicked
5 the victim in the head then the
6 three ran off, leaving the victim
7 on the side of the street.
8 Sometime after this the defendant
9 approached Jeff Downing (phonetic)
10 in the orange pickup and slashed
11 his face with the knife and stated
12 that it was forewarning to his
13 brother. In the other version the
14 defendant is seen chasing two
15 white male youths, one running in
16 front of the other. The rear
17 white male youth fell. The
18 defendant grabbed him by the hair
19 while the youth was on his knees.
20 The defendant stated, where's my
21 brother. The youth replied that
22 he didn't know. At this point --
23 It says Willie and then somebody
24 has crossed it out and put Mike --
25 ran up to the victim and kicked
26 him in the face once. Willie
27 struck the victim in the back area

1 several times with a tree branch.
2 Mike ran up, pulled Willie off,
3 Mike and Willie then fled. A few
4 minutes later Mike heard a loud
5 bang and he saw the defendant
6 running beside an orange pickup
7 yelling, get out of the truck,
8 motherfucker. He saw the butcher
9 knife in the defendant's hand and
10 the truck sped away. The
11 defendant appeared and said, I
12 just killed (indiscernible)."

13 Does either of those sound like what happened
14 that night?

15 INMATE PORRAS: No.

16 PRESIDING COMMISSIONER FISHER: Because
17 neither of them sound like what we've been
18 talking about.

19 INMATE PORRAS: No.

20 PRESIDING COMMISSIONER FISHER: All
21 right. Well then let me ask you this. What is
22 your explanation for more than one stab wound?

23 INMATE PORRAS: I think that happened by
24 him getting hit with a stick.

25 PRESIDING COMMISSIONER FISHER: I think
26 the coroner probably knows the difference
27 between stab wounds and getting hit with a

1 stick.

2 INMATE PORRAS: This here is the
3 probation officer's report right here, isn't it?

4 PRESIDING COMMISSIONER FISHER: Yes, yes.

5 But even if he was jabbed by the stick it
6 wouldn't make that, the same kind of a puncture
7 wound that a knife would make.

8 ATTORNEY FOX: Maybe it would be
9 appropriate to get a copy of the autopsy.

10 PRESIDING COMMISSIONER FISHER: It
11 probably would be.

12 INMATE PORRAS: Yeah.

13 PRESIDING COMMISSIONER FISHER: But there
14 is not one here. All right. Okay. But you're
15 absolutely certain that all you did was swung
16 the knife at one point when you were fighting
17 with --

18 INMATE PORRAS: Yeah.

19 PRESIDING COMMISSIONER FISHER: Moose.

20 INMATE PORRAS: No, Shawn.

21 PRESIDING COMMISSIONER FISHER: In fact,
22 you were fighting with the other guy when you
23 swung the knife.

24 INMATE PORRAS: Yeah, at first.

25 PRESIDING COMMISSIONER FISHER: Okay.

26 INMATE PORRAS: I was fighting with
27 Cosmo.

1 PRESIDING COMMISSIONER FISHER: Cosmo,
2 okay.

3 INMATE PORRAS: And then Shawn got in and
4 I swung the knife.

5 PRESIDING COMMISSIONER FISHER: You need
6 to use their real names. The nicknames --

7 INMATE PORRAS: That is his real name.

8 PRESIDING COMMISSIONER FISHER: That is
9 his real name? Well I know Cosmo is his real
10 name but Moose is not a real name.

11 INMATE PORRAS: Moose is the only one
12 that we used a nickname.

13 PRESIDING COMMISSIONER FISHER: Okay,
14 okay. Okay, let me ask you now about your
15 program. You started C status in '98?

16 INMATE PORRAS: Yes.

17 PRESIDING COMMISSIONER FISHER: But you
18 were still programming until '04, right? You
19 were still doing some programming?

20 INMATE PORRAS: Yeah.

21 PRESIDING COMMISSIONER FISHER: What
22 changed institutionally so that you can't
23 program anymore?

24 INMATE PORRAS: I want to say is it's
25 personal feelings that stopped the program. We
26 were allowed AA program or all that and then
27 some of the COs just take this grooming standard

1 as a threat to their, I guess, authority or
2 whatever so they keep increasing punishment, and
3 you know, they stopped us from programming.

4 We're not allowed to program anymore. Even
5 though we're allowed to go everywhere every
6 other inmate is we're not allowed to program.

7 PRESIDING COMMISSIONER FISHER: But you
8 were allowed to program up until '04?

9 INMATE PORRAS: Right.

10 PRESIDING COMMISSIONER FISHER: Okay.
11 Okay. What do the other inmates do? Are there
12 inmates -- I'm assuming that this has to do with
13 your Native American spiritual beliefs; is that
14 correct?

15 INMATE PORRAS: Right.

16 PRESIDING COMMISSIONER FISHER: Are there
17 other inmates who cut their hair?

18 INMATE PORRAS: Yes.

19 PRESIDING COMMISSIONER FISHER: And how
20 do they justify that?

21 INMATE PORRAS: Their reasons are their
22 reasons. I can't speak for them.

23 PRESIDING COMMISSIONER FISHER: I'm just
24 wondering if it's okay for some of the inmates
25 to cut their hair and why it's not for -- And
26 I'm just asking you because I don't know. I
27 don't know what the difference is. Because I

1 know I've run across that too with other
2 religions primarily that are based on Old
3 Judaism beliefs where the men don't cut their
4 hair and don't shave. So I'm just wondering if
5 some of the inmates that are involved in the
6 same (indiscernible). And you said yes?

7 INMATE PORRAS: Yes.

8 PRESIDING COMMISSIONER FISHER: Okay.
9 I'm just curious. It's not something that I'm
10 going to hold against you, I just don't know the
11 answer to the question. Okay. Any questions?

12 DEPUTY COMMISSIONER MEJIA: Okay. How do
13 you feel about the victim's death?

14 INMATE PORRAS: I always felt bad about
15 it, about his death. Prior to -- When I first
16 moved to Stockton in '84 he lived in apartments
17 down below us and we got along pretty good. We
18 were friends, we went fishing sometimes, you
19 know. And it's always been a pain knowing that
20 he died because of us.

21 DEPUTY COMMISSIONER MEJIA: Have you
22 taken any type of anger management courses?

23 INMATE PORRAS: No.

24 DEPUTY COMMISSIONER MEJIA: Do you
25 remember -- Do you recall why other than the
26 alcohol, do you recall why you stabbed him other
27 than being drunk?

1 INMATE PORRAS: Well there was more of
2 them than there were of us and that's the only
3 reason why I picked up the knife. I never
4 intended to use it.

5 DEPUTY COMMISSIONER MEJIA: So you still
6 feel it's self-defense and mutual combat?

7 INMATE PORRAS: Mutual combat.

8 DEPUTY COMMISSIONER MEJIA: That's what
9 you told the last two psychologists.

10 INMATE PORRAS: Yeah.

11 DEPUTY COMMISSIONER MEJIA: What did you
12 learn from this incident?

13 INMATE PORRAS: I learned a lot.. This
14 happened back when we were young, you know. We
15 thought that drinking was part of being fun, you
16 know, and it wasn't. We didn't think about what
17 we were doing and actions that we was going to
18 cause. Now you've got to think a little bit
19 more, take responsibility for your actions a
20 whole lot more.

21 DEPUTY COMMISSIONER MEJIA: You're out on
22 the streets and you get into a problem. How
23 would you handle that other than the way you
24 handled this incident?

25 INMATE PORRAS: The circumstances would
26 be a whole lot different because there wouldn't
27 be alcohol involved. A lot clearer thinking.

1 DEPUTY COMMISSIONER MEJIA: That carries
2 me to the next question. Have you contacted any
3 AA or anyplace where you can go if you get
4 released to continue your sobriety, a support?

5 INMATE PORRAS: We've got a place in
6 Stockton, it's an Indian thing. It's called
7 Three Rivers Indian Lodge, it's in Manteca just
8 outside of Stockton. That's where I'll be
9 going.

10 DEPUTY COMMISSIONER MEJIA: Do you have a
11 letter from them?

12 INMATE PORRAS: No.

13 DEPUTY COMMISSIONER MEJIA: Do you know
14 where they are?

15 INMATE PORRAS: Yeah.

16 DEPUTY COMMISSIONER MEJIA: Address?

17 INMATE PORRAS: Not by heart but I know
18 where they are.

19 DEPUTY COMMISSIONER MEJIA: Did you
20 contact them and tell them, just in case I get
21 paroled can I -- Do you have any letters to
22 them?

23 INMATE PORRAS: No.

24 DEPUTY COMMISSIONER MEJIA: I've got no
25 other questions.

26 PRESIDING COMMISSIONER FISHER: All
27 right, thank you. Counsel, questions?

1 ATTORNEY FOX: Yes, just briefly. I
2 think earlier we may have misspoken. Aside from
3 trying the marijuana and drinking did you use
4 other drugs ever?

5 INMATE PORRAS: No.

6 ATTORNEY FOX: What about black beauties?

7 INMATE PORRAS: No. Well, I did try the
8 black beauties but it was just like during the
9 week I think it was.

10 PRESIDING COMMISSIONER FISHER: Just that
11 one time?

12 INMATE PORRAS: Yeah.

13 ATTORNEY FOX: Are there any other kinds
14 -- Because what happens when you get a parole
15 date they go through every word that's ever been
16 written about you. And if it appears in any
17 file and we don't talk about it now it can be a
18 reason for sending you back.

19 INMATE PORRAS: The issue of the black
20 beauties, I did speak about those before.
21 Somebody asked, I think it was a probation
22 officer or a psych. Somebody asked me what they
23 were like. I told them what I was told is
24 they're supposed to be like crank, whatever
25 crank was. And down somewhere along the line
26 somebody said barbiturates.

27 ATTORNEY FOX: Okay.

1 INMATE PORRAS: I don't know, it's black
2 beauties though.

3 PRESIDING COMMISSIONER FISHER: They're
4 used for speed, I think, it's not barbiturates.

5 ATTORNEY FOX: I don't know. I don't
6 know. And did you ever try crank?

7 INMATE PORRAS: No.

8 ATTORNEY FOX: Because in the Board
9 Report from October of 2003 the writer writes
10 that the subject has also used black beauties
11 for two weeks in 1987 and consumed crank five
12 times.

13 INMATE PORRAS: He asked me what the
14 black beauties were supposed, what they were.
15 And I said, someone told me they were like
16 crank. Crank is speed.

17 ATTORNEY FOX: Okay. I just wanted to
18 clarify that.

19 PRESIDING COMMISSIONER FISHER: All
20 right.

21 DEPUTY COMMISSIONER MEJIA: Before we
22 start, Commissioner, let me just turn this tape
23 so I won't cut her off.

24 PRESIDING COMMISSIONER FISHER: Go ahead.

25 (The tape was turned over.)

26 DEPUTY COMMISSIONER MEJIA: And counsel,
27 did you have an additional question?

1 ATTORNEY FOX: Just one, thank you.

2 DEPUTY COMMISSIONER MEJIA: Go ahead.

3 ATTORNEY FOX: It's regarding the most
4 recent 123.

5 INMATE PORRAS: Right.

6 ATTORNEY FOX: What was all that about?

7 INMATE PORRAS: I had a floater TV in the
8 house. It's a TV that doesn't belong to
9 anybody. Somebody paroled and left it behind
10 and I had it in the house. They did a cell
11 search and took the TV and wrote me up for it.

12 ATTORNEY FOX: Okay. No further
13 questions, thank you.

14 PRESIDING COMMISSIONER FISHER: All
15 right. I just want to clarify this because for
16 some reason the moment that I got Cosmo and
17 Moose mixed up it just continued through all the
18 hearing. So I just want to be clear that I know
19 where everybody was and what everybody was
20 doing. Because in the Board Report it says that
21 witnesses saw you chasing somebody up the
22 street. Is that correct?

23 INMATE PORRAS: That's what it says in
24 the Board Report.

25 PRESIDING COMMISSIONER FISHER: But it's
26 not correct?

27 INMATE PORRAS: Yeah, they seen Mike

1 chasing Cosmo.

2 PRESIDING COMMISSIONER FISHER: It was
3 Mike chasing Cosmo, okay. Do you and Mike look
4 alike?

5 INMATE PORRAS: No.

6 PRESIDING COMMISSIONER FISHER: All
7 right. It also says that witnesses saw your
8 brother run up to Shawn and kick him. Or was it
9 Mike who kicked him?

10 INMATE PORRAS: Mike, James and Willie
11 look alike, looked alike, but I was the smaller
12 of them.

13 PRESIDING COMMISSIONER FISHER: Okay.
14 And so the person who ran up to Shawn and kicked
15 him. Was that Mike?

16 INMATE PORRAS: Yeah.

17 PRESIDING COMMISSIONER FISHER: Okay.
18 And then he was also the one who was chasing him
19 up the street?

20 INMATE PORRAS: He chased Cosmo then he
21 came back.

22 PRESIDING COMMISSIONER FISHER: Okay.
23 What I'm trying to get at is who did the
24 witnesses see chasing? It was Mike?

25 INMATE PORRAS: Yeah, it was Mike they
26 seen chase Cosmo.

27 PRESIDING COMMISSIONER FISHER: Just to

1 be sure... All right. There was something else.
2 I think that was it, all right. And what about,
3 what about Phillips and Wheeler? Where were
4 they at this point?

5 INMATE PORRAS: They were in the alley.

6 PRESIDING COMMISSIONER FISHER: And what
7 about James?

8 INMATE PORRAS: He was right there with
9 Mike.

10 PRESIDING COMMISSIONER FISHER: And so
11 everybody was sort of in the general area.

12 INMATE PORRAS: Right.

13 PRESIDING COMMISSIONER FISHER: But aside
14 from Mike nobody else was with you.

15 INMATE PORRAS: Right.

16 PRESIDING COMMISSIONER FISHER: Okay. I
17 just want to be sure. There were so many names
18 thrown in there. And for some reason
19 (indiscernible) keep Cosmo and Moose straight I
20 thought I better clarify who was where. All
21 right, any other questions, counsel?

22 ATTORNEY FOX: No, thank you.

23 PRESIDING COMMISSIONER FISHER: Any other
24 questions, Commissioner?

25 DEPUTY COMMISSIONER MEJIA: No other
26 questions, thank you.

27 PRESIDING COMMISSIONER FISHER: Would you

1 like to close?

2 ATTORNEY FOX: Yes, thank you.

3 Mr. Porras would have the panel find him
4 suitable for parole and set a parole date
5 because he is suitable. He can't go back and
6 change the events that led to Mr. Bartholomew's
7 death but certainly it was out of character for
8 him to act out in such a violent way. And that
9 comes from his history and also the statement of
10 his mother where in most cases he was the victim
11 of bullies in the neighborhood. His
12 institutional adjustment has been pretty good.
13 And he has his religious belief which preclude
14 him from participating in some of the activities
15 that are available to other inmates but that
16 should not be held against him. Turning to the
17 psychological evaluation. It's a good
18 evaluation and supportive of release. And
19 turning to the parole plans, Mr. Porras has a
20 good set of parole plans with his family in the
21 county of commitment and it includes work,
22 residence and also AA through -- Was it the
23 Three Rivers?

24 INMATE PORRAS: Indian Lodge.

25 ATTORNEY FOX: Indian Lodge, which is
26 culturally appropriate for him. In the event
27 there are lingering concerns about the wounds I

1 think it would be appropriate to ask the police
2 department or the district attorney's office to
3 provide us with a copy of the autopsy so we can
4 settle it. But I think that's something that
5 could be done by the parole department doing an
6 investigation for placement. Mr. Porras is
7 appropriately remorseful and would pose no risk
8 to the community if released if he sticks with
9 his plans to stay with AA. And there is no
10 reason to believe he wouldn't. He has not had
11 that kind of an issue since he's been in custody
12 recently. In the event the panel does not find
13 him suitable Mr. Porras would request that the
14 panel state with specificity the facts upon
15 which you rely in finding him unsuitable. And
16 I'll submit based on that unless there are
17 comments Mr. Porras would like to make.

18 PRESIDING COMMISSIONER FISHER: Anything
19 you'd like to add?

20 INMATE PORRAS: End with that.

21 PRESIDING COMMISSIONER FISHER: All
22 right.

23 ATTORNEY FOX: Thank you.

24 PRESIDING COMMISSIONER FISHER:
25 (Inaudible).

26 R E C E S S

27 --oOo--

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER MEJIA: We are back
4 on record for our decision on Mister --

5 PRESIDING COMMISSIONER FISHER: Porras.

6 DEPUTY COMMISSIONER MEJIA: Porras.

7 PRESIDING COMMISSIONER FISHER: Thank
8 you. Sorry, I didn't mean to interrupt you.

9 DEPUTY COMMISSIONER MEJIA: Thank you.

10 PRESIDING COMMISSIONER FISHER: All
11 right. Let me note for the record that everyone
12 who was previously in the room and identified
13 themselves has returned to the room.
14 Mr. Porras, the panel reviewed all of the
15 information received from the public and relied
16 on the following circumstances in concluding
17 that you are not yet suitable for parole and
18 would pose an unreasonable risk of danger to
19 society and a threat to public safety if
20 released from prison. This is a one year
21 denial. It's based primarily on the commitment
22 offense. And the issue at hand has to do with
23 insight and the fact that the official version
24 of this crime is significantly different than
25 what you put forward today. And unfortunately
26 there is only one way to find out what the real,
27 NEVILLE PORRAS E-37606 DECISION PAGE 1 07/12/05

57.

1 what the real story is so we're going to order a
2 coroner's report and a police report. Because
3 frankly, the issue of insight is one of the most
4 important issues as far as I'm concerned in
5 dealing with (inaudible). And according to
6 witnesses the victim was chased down the street
7 by Mr. Porras. According to witnesses,
8 according to the information that we have in the
9 summaries of the crime in the probation
10 officer's report and the Board Report, which is
11 the only information that we have available
12 aside from the appellate decision, which
13 essentially follows the same line of thought,
14 (inaudible) that Shawn Bartholomew, after
15 perhaps being stabbed once, was chased and
16 continued to be stabbed. And the problem that
17 we have with this is the fact that there's some
18 -- The way that it's stated in the appellate
19 decision left me believing that there was only
20 one stab wound. But the probation officer's
21 report, which generally takes its information
22 from the police report, stated that there were
23 three with two to the back. Which would fit the
24 scenario of him being stabbed once and then
25 being chased down the street by the inmate and
26 stabbed. The two stab wounds through the back
27 NEVILLE PORRAS E-37606 DECISION PAGE 2 07/12/05

1 make sense. And there is just no other way for
2 us to come to terms with (inaudible). Because
3 frankly, if there were three stab wounds I know
4 the next panel will have some other questions
5 for you. So essentially the issue has been the
6 commitment offense. This was the murder of a 17
7 year old boy. This was a situation where you
8 took a knife to a fistfight. Nobody else was
9 armed. It was escalated to a murder by you.
10 And once again the motive was that apparently
11 there had been some words exchanged and you
12 could hear your brother yelling for you. But
13 aside from getting into a fight with these two
14 guys, with Cosmo and Shawn, there was just
15 absolutely no reason to have a weapon. So we
16 need to know. On the face of it that's enough
17 as an issue. The fact that this was a bunch of
18 kids. It could have ended up with everybody
19 just beating each other up but you killed
20 somebody. On paper that's enough. It's
21 important for us to know if there were indeed
22 two stab wounds to the back of Shawn or not. We
23 have to know that and the only way of proving
24 that is (inaudible). The prisoner has a very
25 minor history of any kind of criminal behavior.
26 It has to do with essentially there was a
27 NEVILLE PORRAS E-37606 DECISION PAGE 3 07/12/05.

1 burglary second. As he was telling us today it
2 was because they were throwing rocks and a
3 window got broken. When they broke the window
4 they went inside. He was made a ward of the
5 court after that. He was also involved in a
6 trespassing that he said that had to do with
7 them being on school grounds. He was also cited
8 for driving under the influence and alcohol was
9 involved in this commitment offense. His
10 unstable social history includes this behavior
11 as well as the fact that he dropped out of
12 school and his (inaudible). He programmed quite
13 well up until 2004, at which point he indicated
14 that because of his C status he hasn't been
15 allowed to continue to program. And it has been
16 -- It shows that he participated in AA last
17 year. Prior to that the only thing that I show
18 is in 2001 and that was for being the designated
19 pipe holder in the Native American Spiritual
20 Circle. And the only programming I show prior
21 to that, aside from AA and NA has been the
22 contagious diseases programs. So at this point
23 he hasn't sufficiently participated in self-
24 help. He has a current psych evaluation that is
25 favorable. He does have parole plans. He has
26 good family support as evidenced by his mother's
27 NEVILLE PORRAS E-37606 DECISION PAGE 4 07/12/05

1 letter. We did receive some letters, responses
2 to 3042 notices but they were not in a timely
3 fashion and we did not consider them in making
4 our decision, other than the one that were
5 supportive from the public defender. The panel
6 finds that the prisoner needs to participate in
7 self-help in order to continue to build towards
8 a successful parole and in order to cope and
9 understand stress in a non-destructive manner.
10 Also that his gains are somewhat recent." He
11 needs to continue to maintain those gains
12 (inaudible). We want to commend you for your
13 program, you've done a good job. I think that
14 this issue of insight is very important and it's
15 something that we have to address. There is
16 just now way that we can leave it unaddressed.
17 We have to know for a fact whether you're
18 telling us --

19 INMATE PORRAS: Okay, even in trial they
20 couldn't discern what made the wounds to his
21 back. They didn't know.

22 PRESIDING COMMISSIONER FISHER: Okay.

23 INMATE PORRAS: And when you read the
24 probation report you'll see that the judge had
25 to order it to be --

26 PRESIDING COMMISSIONER FISHER: The
27 NEVILLE PORRAS E-37606 DECISION PAGE 5 07/12/05

1 information?

2 INMATE PORRAS: Yeah, for her to complete
3 it. So it's a mix of whatever she put together
4 between all three of us.

5 PRESIDING COMMISSIONER FISHER: Okay. But
6 once we've got all the information in our hands
7 then we just have to deal with what we've got.
8 When we don't have it all there are two choices.

9 INMATE PORRAS: But this --

10 PRESIDING COMMISSIONER FISHER: Either
11 you're lying to us --

12 INMATE PORRAS: This is like what, my
13 fourth parole hearing? Everybody's done the
14 same thing.

15 PRESIDING COMMISSIONER FISHER: Did
16 anybody order the --

17 INMATE PORRAS: Outside of the no parole
18 policy we're just doing the same thing over and
19 over and over again

20 PRESIDING COMMISSIONER FISHER: Let me
21 finish, okay, because you're just assuming
22 things here. Did anybody order the report
23 before? Because I don't see any indication that
24 anybody has ever ordered the coroner's report or
25 the police report.

26 INMATE PORRAS: Yeah, but the thing is
27 NEVILLE PORRAS E-37606 DECISION PAGE 6 07/12/05

1 we've been through trial. This is what I'm
2 doing the time for now.

3 PRESIDING COMMISSIONER FISHER: Did
4 anybody in a prior hearing --

5 INMATE PORRAS: Nobody has ordered it
6 before because there's really no need for it.

7 PRESIDING COMMISSIONER FISHER: Okay.
8 Well I just did. I just did because I think
9 there is a need for it. I'm not comfortable
10 that you're telling me the truth because the
11 information I have in the file conflicts with
12 what you're telling me.

13 INMATE PORRAS: Right.

14 PRESIDING COMMISSIONER FISHER: The
15 information, according to the statements of the
16 witnesses, conflicts with what you're telling
17 me.

18 INMATE PORRAS: Right.

19 PRESIDING COMMISSIONER FISHER: And they
20 may be wrong. But I have no way of knowing that
21 when I only have the information that I have at
22 hand. If you're lying to me you have no
23 insight. If you have no insight I'm not
24 comfortable letting you go back out.

25 INMATE PORRAS: What do you mean by
26 insight.

1 PRESIDING COMMISSIONER FISHER: Let me
2 finish the decision because the time for
3 discussing this is over, okay.

4 INMATE PORRAS: I'm just asking questions
5 because --

6 PRESIDING COMMISSIONER FISHER: I
7 understand that. But you don't ask me
8 questions, I ask the questions.

9 INMATE PORRAS: You know, I've got to
10 progress and do better.

11 PRESIDING COMMISSIONER FISHER: So stop
12 now or I'm going to have them take you out of
13 the room, all right. I'm trying to explain to
14 you the best I can so you listen to me. I need
15 to know if you're telling us the truth about
16 what happened that night. Because if you're
17 lying to us then you're not accepting full
18 responsibility for what happened. Now we may
19 not ever be able to have an absolute definite
20 answer. But we have to have as much of the
21 information as we can possibly have in order to
22 come to that conclusion.

23 INMATE PORRAS: Right.

24 PRESIDING COMMISSIONER FISHER: Because
25 if I get a copy of the coroner's report and it
26 tells me clearly that there are two stab wounds

1 to the back then I'm going to have some other
2 questions for you if I'm on your next panel. If
3 it tells me that there are injuries that may
4 have been something else then that's a different
5 story.

6 INMATE PORRAS: Right.

7 PRESIDING COMMISSIONER FISHER: And I'm
8 more likely to err on the side that you're
9 probably telling me exactly what you remember
10 happened. But there is no way that I can decide
11 that without the information.

12 INMATE PORRAS: Right.

13 PRESIDING COMMISSIONER FISHER: Now I
14 have looked in the file and I don't see where
15 anybody at a parole hearing ever ordered that
16 before. I just did, we just filled out the
17 paperwork. And we're going to bring you back
18 next year with whatever panel having that
19 information at hand. I can tell you that if we
20 don't have that information in the file and the
21 panel gives you a parole date they're going to
22 kick it back in decision review or at the
23 Governor's level, one or the other. Because
24 they're going to read the same things that we
25 read today and they're going to come to the same
26 questions that we have today.

27 NEVILLE PORRAS E-37606 DECISION PAGE 9 07/12/05

1 INMATE PORRAS: Right.

2 PRESIDING COMMISSIONER FISHER: The other
3 thing I want to suggest to you is that because
4 you were drunk the night of the commitment
5 offense, regardless of the fact that you can't
6 participate in AA in the institution because of
7 your C status, you still need to be doing some
8 substance abuse programming. And you can do it
9 on your own if you have the AA book or if you
10 have anything else.

11 INMATE PORRAS: Well, yeah. That's why I
12 attend the Native American spiritual sweat lodge
13 and all that.

14 PRESIDING COMMISSIONER FISHER: Okay.

15 INMATE PORRAS: Because that works for me
16 better than AA.

17 PRESIDING COMMISSIONER FISHER: And it
18 does include that. But the problem is -- The
19 problem is this. I'm trying to help you out
20 here, okay.

21 INMATE PORRAS: That's what I'm trying to
22 do is get information.

23 PRESIDING COMMISSIONER FISHER: Let me
24 tell you what you need to do. I know that a lot
25 of the different religious programs that they
26 have put together will include substance abuse.

27 NEVILLE PORRAS E-37606 DECISION PAGE 10 07/12/05.

1 Sometimes they will give you chronos
2 specifically for that, sometimes they won't. If
3 they won't what you need to have when you come
4 here next panel is whatever the philosophy is.
5 Something that you can show them that says here,
6 this is how we address substance abuse issues.
7 This is how we deal with it. Because that's
8 another thing that because of the fact in
9 particular that you were drunk the night of the
10 commitment offense.

11 INMATE PORRAS: Right.

12 PRESIDING COMMISSIONER FISHER: The
13 panels are going to be looking for it and so is
14 decision review and so is the Governor's Office.
15 You're really close. You're really close and so
16 you've got all to dot all these Is and cross all
17 these Ts and you've got to make the panel
18 comfortable that you've addressed every issue
19 and that you're just absolutely coming clean
20 with everything. Then that has to go on and
21 just on paper.

22 INMATE PORRAS: Right.

23 PRESIDING COMMISSIONER FISHER: Without
24 even the benefit of having you in front of them.
25 Decision review and the Governor's Office are
26 going to look at it. So it's really important

27 NEVILLE PORRAS E-37606 DECISION PAGE 11 07/12/05

1 and I really am trying to help you here.

2 INMATE PORRAS: Yeah.

3 PRESIDING COMMISSIONER FISHER: I think
4 you're doing a good job. And if you're telling
5 me the truth about what happened and we get
6 these reports and it gives us some indication
7 that you've got some insight and that this
8 really was the way things went then I think
9 you've got a really good shot at getting a date.

10 INMATE PORRAS: Yes, everything I've said
11 is the same thing I've said to the policeman
12 from the beginning until now.

13 PRESIDING COMMISSIONER FISHER: But it's
14 not what the official version says.

15 INMATE PORRAS: Yeah.

16 PRESIDING COMMISSIONER FISHER: And it's
17 not what the witnesses say. And we understand
18 that you may be frustrated with that but there's
19 nothing that we can do to address that issue
20 other than just accepting what you say at face
21 value.

22 INMATE PORRAS: Right.

23 PRESIDING COMMISSIONER FISHER: Unless we
24 have the information. And it may surprise you
25 to find out that sometimes guys come in here and
26 lie to us. So, you know, we need to have that

27 NEVILLE PORRAS E-37606 DECISION PAGE 12 07/12/05.

1 information in order to be able to make an
2 educated decision about whether or not you have
3 insight into your commitment offense.

4 INMATE PORRAS: Yeah.

5 PRESIDING COMMISSIONER FISHER: And you
6 need to do the work that you can't do through
7 the institution on your own. You need to have
8 it on paper to bring it back to the panels to
9 show them that you're just not taking an
10 attitude and saying, I'm not going to program
11 anymore because I don't like the way the
12 institution is dealing with me. You need to
13 show that you are not able to participate in
14 those programs but that you're doing it on your
15 own. All right?

16 INMATE PORRAS: Yeah.

17 PRESIDING COMMISSIONER FISHER: Okay.
18 That completes the reading of the decision. Do
19 you have any comments, Commissioner?

20 DEPUTY COMMISSIONER MEJIA: Yeah. You've
21 got to get some anger management. I don't know
22 how you're going to get it. Anger management
23 class. That's all I have.

24 PRESIDING COMMISSIONER FISHER: And
25 that's okay, you can do that on your own too.

26 INMATE PORRAS: Yeah, I was just going to
27 NEVILLE PORRAS E-37606 DECISION PAGE 13 07/12/05'

1 say, anger management. What would make --

2 PRESIDING COMMISSIONER FISHER: Because
3 of the crime.

4 DEPUTY COMMISSIONER MEJIA: That's all
5 I've got to say, thank you.

6 PRESIDING COMMISSIONER FISHER: Because
7 of the crime. Just because of the crime. And
8 do it on your own. Just get a book and just
9 bring it like a book report. Show the panel
10 that you've done the work.

11 INMATE PORRAS: All right.

12 PRESIDING COMMISSIONER FISHER: All
13 right?

14 INMATE PORRAS: Okay then.

15 PRESIDING COMMISSIONER FISHER: Good
16 luck.

17 --oOo--

18

19

20

21

22

23 PAROLE DENIED ONE YEAR

24 THIS DECISION WILL BE FINAL ON: *NEW 7-9*

25 YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT
26 DATE, THE DECISION IS MODIFIED.

27 NEVILLE PORRAS E-37606 DECISION PAGE 14 07/12/05

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, RAMONA COTA, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 69, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING OF NEVILLE PORRAS, CDC NO. E-37606, ON JULY 12, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated July 25, 2005, at Sacramento County, California.



RAMONA COTA
TRANSCRIBER
PETERS SHORTHAND REPORTING

EXHIBIT "C"

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
(REVISED AUGUST 1998)
PAROLE CONSIDERATION HEARING
MARCH 2001 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD
SEPTEMBER 17, 2001

ADDENDUM REPORT/CORRECTION:

Inmate Neville Porras, CDC# E-37606, requested that the following corrections be made to the psychological evaluation of March 2001 for the Board of Prison Terms.

XIII. REVIEW OF LIFE CRIME:

Inmate Porras described the circumstances surrounding his commitment offense, involving the Second Degree Murder of the victim with a knife. He admits full responsibility for the death of the victim.

During one of a long series of fights with his neighbors, and in which all parties had been drinking alcohol, the victim was stabbed to death by the inmate. The inmate described the confrontation as "mutual combat," and subsequently mitigated by saying that he had tried to avoid the fight. He said he was 19 and the victim was 17 at the time of the fatal incident.

THE REMAINING TEXT REMAINS UNCHANGED.



JOE REED, Ph.D.
Staff Psychologist
CORRECTIONAL TRAINING FACILITY, SOLEDAD

JR/gmj

D: 09/17/01

T: 09/25/01

PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
(REVISED AUGUST 1998)
PAROLE CONSIDERATION HEARING
MARCH 2001 LIFER CALENDAR

CORRECTIONAL TRAINING FACILITY, SOLEDAD
JANUARY 30, 2001

This is a psychological evaluation for the Board of Prison Terms for inmate Neville Porras, CDC# E-37606. This report is based upon a personal clinical interview of the inmate, conducted on 01/30/01, as well as a review of his Central file and unit health record. This clinical interview and a review of all pertinent documents were for the express purpose of preparing this report.

PSYCHOSOCIAL ASSESSMENT

I. IDENTIFYING INFORMATION:

Inmate Porras is a 31-year-old, single, Native American whose date of birth is 03/10/69. His stated religious affiliation is American Indian. Bilingual, English is his primary language, and he also speaks Dakota. No obvious unusual physical characteristics were observed and he denies using any nicknames or aliases.

II. DEVELOPMENTAL HISTORY:

Inmate Porras has no remarkable developmental history. He denies any childhood history of physical or sexual abuse as either a perpetrator or a victim. He did acknowledge that he suffered a mild head injury secondary to a motor vehicle accident when he was 12. No obvious residual symptoms were noted.

III. EDUCATIONAL HISTORY:

Inmate Porras states that he attended public school and completed the tenth grade. He received his GED in 1997 at California State Prison, Solano (CSP-SOL). In 1995, his measured grade point level was 10.3 TABE. He has no history of special education or academic or behavioral problems in school. He currently has no involvement or interest in educational activities.

PORRAS, NEVILLE
CDC NUMBER: E-37606
BPT PSYCHOLOGICAL EVALUATION
PAGE TWO

IV. FAMILY HISTORY:

Inmate Porras acknowledged that he has one brother who has abused alcohol. He also revealed that he has three brothers with a history of felonies, and also that his father has a history of molesting his daughter. He generally described his current relationships with his immediate family members as warm and supportive, noting that he contacts them with phone calls and letters. He states that he has no history of abuse in these relationships.

V. PSYCHOSEXUAL DEVELOPMENT AND SEXUAL ORIENTATION:

Inmate Porras is a heterosexual male. He denied any history of sexual aggression or high-risk sexual behavior.

VI. MARITAL HISTORY:

Inmate Porras reports that he has never been married and has no children from any relationships.

VII. MILITARY HISTORY:

Inmate Porras has no history of military service.

VIII. EMPLOYMENT AND INCOME HISTORY:

Inmate Porras reports that his preincarceration work history includes working five years as a carpet layer, as a tile layer, and also as an auto mechanic.

His incarceration work history includes getting training from 1995 until 1997 in vocational radiology.

IX. SUBSTANCE ABUSE HISTORY:

Inmate Porras acknowledges that he has abused alcohol in the past. He reports that he last used alcohol in 1988, the time of his incarceration. He says that he has abused no other drugs.

He reports having attended Alcoholics Anonymous regularly from 1995 until 2000, and that he has not

PORRAS, NEVILLE
CDC NUMBER: E-37606
BPT PSYCHOLOGICAL EVALUATION
PAGE THREE

participated in that program for the last six months due to the unavailability of classes at CTF. He plans to attend AA as soon as they are again available, and states that he is currently on the waiting list. He has a strong commitment not to drink alcohol ever again. This inmate does appear to have an alcohol abuse history.

X. PSYCHIATRIC AND MEDICAL HISTORY:

The inmate's recent prior psychiatric diagnosis includes Intermittent Alcohol Abuse, in institutional remission. He has no history of prior hospitalizations or a history of serious accidents, including head injury. He has no history of suicidal behavior. He has no seizure or other neurological conditions. He has no significant disabilities or impairments and is currently taking no significant medications.

XI. PLANS IF GRANTED RELEASE:

If granted parole, inmate Porras plans to live in Stockton with his friends or his parents, whom, he states, have all agreed to this arrangement. His financial and vocational plans include working at a job offered by a friend at his friend's private business involving custom tile and marble laying. His prognosis for community living is excellent.

CLINICAL ASSESSMENT

XII. CURRENT MENTAL STATUS/TREATMENT NEEDS:

During the clinical interview, inmate Porras was alert and oriented to person, place and time. He was well dressed and groomed. His speech was articulate and contextually meaningful. His mood and affect were within normal limits and his behavior was appropriate to the setting. No evidence of a mood or thought disorder was demonstrated. His estimated level of intellectual functioning was within the average to above average range.

PORRAS, NEVILLE
 CDC NUMBER: E-37606
 BPT PSYCHOLOGICAL EVALUATION
 PAGE FOUR

CURRENT DIAGNOSTIC IMPRESSIONS:

AXIS I: Alcohol Abuse, in sustained full remission
 in a controlled environment.
 AXIS II: No Contributory Personality Disorder.
 AXIS III: No Contributory Physical Disorder.

His current level of insight and judgment in general, and specifically regarding his commitment offense, is very good and supports a positive prediction of successful adaptation to community living.

XIII. REVIEW OF LIFE CRIME:

Inmate Porras described the circumstances surrounding his commitment offense, involving the Second Degree Murder of the victim with a knife. He admits full responsibility for the death of the victim. The inmate reports that he had previously argued with the victim a number of times, that they lived only six houses apart, and that he often tried to simply avoid the victim to avoid confrontation. During one of a long series of fights, and in which all parties had been drinking alcohol, the victim was stabbed to death by the inmate. The inmate described the confrontation as mutual combat, and subsequently mitigated by saying that he had tried to avoid the fight, and had avoided other previous altercations with the victim. He said he was 19 and the victim was 23 at the time of the fatal incident.

The inmate showed good empathy towards the victim and his family, and appreciated the damage done to the victim's family. He insightfully noted that he should have been more careful in trying to avoid the fight, stating, "It ruined his life and his family and everyone involved." He also further admitted that alcohol limited his vigilance to avoid fighting. He strongly asserted that he intends to never drink alcohol again. The inmate seemed genuinely penitent for his crime and seems to understand the circumstances culminating in the crime.

XIV. ASSESSMENT OF DANGEROUSNESS:

A. His violence potential within a controlled setting is considered to be significantly below average

PORRAS, NEVILLE
CDC NUMBER: E-37606
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PAGE FIVE

relative to this Level II inmate population. This conclusion is based upon several factors.

On the one hand, he has three DUIs which he received from the age of 17 to 18. He also had a burglary charge which was reduced to trespassing during this time. While in CDC, he has received four CDC-115 violations, all in 1998. He has also received seven CDC-128s, the last received in 1999.

On the other hand, he has no history of gang affiliation, and his juvenile history involves minimal violence. However, there was an increasing pattern of alcohol abuse during this period. A first term, the instant crime is his first adult criminal offense. His four CDC-115 disciplinaries involved failure to cut his hair and he has no disciplinaries for violent behavior. Importantly, he has no record of violent behavior during his 11 years of incarceration within CDC. He showed genuine empathy and remorse toward the victims of his crime. No psychopathy was observed during the clinical interview.

As noted in the prior psychiatric report dated 1998, Dr. Claire and Dr. Vasquez reported that the young man was probably not especially violence-prone at the time of the commitment offense, and that the event appeared to be a response to drinking-induced loss of inhibition after prolonged exposure to aggravation and stress. This clinician's review is consistent with that of Dr. Claire and Dr. Vasquez.

Also, the inmate was 19 at the time of the commitment offense, and he appears to have matured greatly during his 11 years completed within CDC.

Therefore, in light of these factors, his violence potential is considered to be significantly below average relative to this Level II inmate population.

- B. / If released to the community, his violence potential is considered to be no more than the average citizen in the community.

PORRAS, NEVILLE
CDC NUMBER: E-37606
BPT PSYCHOLOGICAL EVALUATION
PAGE SIX

- C. Substance abuse is a risk factor which may be a precursor to violence for this individual.

XV. CLINICIAN OBSERVATIONS/COMMENTS/RECOMMENDATIONS:

- A. This inmate is competent and responsible for his behavior. He has the capacity to abide by institutional standards.
- B. This inmate does not have a mental health disorder which would necessitate treatment either during his incarceration period or following upon parole.
- C. This inmate does appear to have an alcohol abuse history, and continued participation in Alcoholics Anonymous is suggested both during his incarceration within CDC and as a condition of parole.



JOE REED, Ph.D.
Staff Psychologist
Correctional Training Facility, Soledad



R. S. COATE, Psy.D.
Senior Supervising Clinical Psychologist
Correctional Training Facility, Soledad

JR/gmj

D: 02/01/01
T: 02/08/01

EXHIBIT “D”

**PSYCHOLOGICAL EVALUATION FOR THE BOARD OF PRISON TERMS
(REVISED AUGUST 1998)
PAROLE CONSIDERATION HEARING
JULY 2005 LIFER CALENDAR**

**CORRECTIONAL TRAINING FACILITY, SOLEDAD
JUNE 7, 2005**

This is a psychological evaluation update for the Board of Prison Terms on inmate Neville Porras, CDC# E-37606. This report is based on a personal clinical interview of the inmate on 06/07/05. Additionally, in preparation for this update, the Central file, unit health records, and previous psychological assessment conducted by Dr. Joe Reed in January 2001 were reviewed. This clinical interview and the review of all pertinent documents were for the express purpose of preparing this report.

Since biographical and social history factors have previously been extensively reviewed and documented, this report will focus on current risk factors only.

Inmate Porras is a 36-year-old, native American male whose date of birth is 03/10/69. He has now been incarcerated for a total of 17 years while serving time for a second degree murder conviction, carrying a 15-year-to-life sentence, with a one-year enhancement.

The Central file documents a model inmate with no violent disciplinarys during the entire period of incarceration. Although inmate Porras received CDC-115 disciplinarys for not cutting his hair, and being in possession of an unauthorized TV set, these have no bearing on this inmate's overall risk factors in a community setting.

In 2001, Dr. Joe Reed assigned a minimum risk threat to inmate Porras, both within an institutional setting, and outside in the community at large.

Since that evaluation, inmate Porras has continued to program well, and his risk factors remain essentially unchanged.

At the time of the instant offense, inmate Porras was 19 years old. He is now 36. He remains genuinely remorseful for his part in the tragic loss of a human life, and his lengthy prison record is a reflection of both compliance and a motivation to change.

Inmate Porras has a strong family support system in Stockton, California, who will serve to facilitate his reintegration into society.

Risk factors for inmate Porras remain unchanged since his previous evaluation in 2001, and he is currently at no greater risk of reoffending than the average citizen.

Inmate Porras is currently a suitable candidate for parole release consideration, with the recommendation that he abstain totally from the use of alcohol.

EXHIBIT "E"

S157605

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re NEVILLE PORRAS on Habeas Corpus

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

MAY 21 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

Nerille Posadas E-37666
P.O. Box 684 Y-337-
Sociedad, CA,
93960-0684

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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